

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: AXAHCV2023/0014

BETWEEN:

TERRENCE WEBSTER

Appellant

-AND-

- 1. BOYSTON SORTON**
- 2. THE REGISTRAR OF LANDS**

Respondents

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Ms. Kimberly O'Meally of counsel for the Appellant.

Mr. Michael Bourne of counsel for the 1st Respondent.

2024: May 7,
July 12.
Re-Issued July 30.

Judgment

- [1] **Moise, J.:** This is an appeal against the decision of the Registrar of Lands delivered on 1st March, 2023. In her decision, the learned registrar dismissed the appellant's application for title by prescription to a parcel of land registered as Section East Central Block 89319B Parcel 85 in the Land Registry of Anguilla. I have decided that the appeal should be allowed, and the appellant is entitled to a declaration that he has acquired ownership of the premises by prescription and is entitled to the registration of his title. These are the reasons for my decision.

The Facts

- [2] By way of hand-written note, In August 1980, Ms. Venetia Hodge gifted to Mr. Terrence Webster (Mr. Webster) a shop which she operated on Section East Central Block 89319B Parcel 85 (the property). Ms. Hodge was Mr. Webster's aunt and the then owner and operator of the shop in question. She was however not the registered proprietor of the land. Ms. Venetia Hodge had herself been given ownership of the building in which the shop was operated in August 1969, by her brother Mr. Samuel Austin Hodge, who was then the registered proprietor of the property. The shop was described in this handwritten note as a *"shop like house ... bounded to the west of Peter Hodge's property"*. There appears to be very little doubt that Ms. Hodge did not own the land on which the building was located and that what had been gifted to Mr. Webster was this building in which the shop was contained.
- [3] Mr. Webster states that, although he had previously been given the shop, shortly after the passage of Hurricane Luis in 1995, he repaired the building, installed a concrete roof, changed the windows, added on a porch, bathroom, bedroom and made the building habitable. The building on the property now measured approximately 20 feet wide by 29 feet long. At the time he had been given this shop in 1980, the building was only 14 feet wide and 29 feet long. He therefore expanded on the building. Mr. Webster was not given permission to do any of this by anyone. He was also not given any permission to extend on this house by the registered proprietor at the time. Mr. Webster subsequently rented out the building to different people between the years 1996 to 1999.
- [4] In 1999, Mr. Webster undertook further alterations and repairs to the building. He renovated and converted the building for use specifically as a residence. He supplemented the cistern and planted coconut and grape trees on the land, as well as other plants on the property. Mr. Webster used a cleared-out area of the property, close to a coconut grove, to park boats for more than 15 years. He claims that he has occupied the property as a residence since completion of the renovations for approximately 20 years. By my own calculation, it would mean that by the time of the decision of the registrar, Mr. Webster had been in occupation of the premises for approximately 24 years after these renovations in 1999, and even longer if one considers the initial renovations in 1995. Mr. Webster also states that he paid property

taxes to the government and obtained a connection from ANGLEC for the supply of electricity to the premises. He presented receipts of these payments, at least from the year 2015. He paid rent to no one and was not disturbed in his possession of the premises in any way.

[5] I pause at this stage in the evidence to note that these assertions made by Mr. Webster are not controverted. In fact, the registrar in her own findings in the hearing before her accepted this to be true and, at paragraphs 39 to 42 of her decision, determined that Mr. Webster had been in factual possession with the requisite intention to possess as owner. For reasons which I will explain later on, I am of the view that the registrar was correct in that determination.

[6] Mr. Webster states, in his affidavit, that sometime in 2015 he visited Mr. Boyston Sorton in St. Martin where he resided. Mr. Sorton was then the registered proprietor of the property. Mr. Webster stated that he visited Mr. Sorton only after having been served with a letter from the bailiff on behalf of Mr. Sorton. This letter requested vacant possession from the occupant of the premises. Mr. Webster did not vacate. He visited Mr. Sorton in Saint Martin and introduced himself. Mr. Webster's evidence was that he informed Mr. Sorton that the house was gifted to him by his aunt. He states in his statutory declaration that although he was then aware that Mr. Sorton was the registered proprietor, he was living on the land for longer than the statutory period required to claim adverse possession. He denies ever offering to purchase the land from Mr. Sorton but indicated that he did take a document over to Mr. Sorton to have the property transferred to him. It was Mr. Webster's evidence that by the time he took this document over to Saint Martin he had already met the requirements for adverse possession and that he was advised by one Noreen that this was a way of getting the property registered in his name.

[7] Mr. Sorton's evidence in this case was that his late uncle, Mr. Samual Austin Hodge, was the executor in the estate of Mr. Peter Hodge. I gather from the evidence that Peter Hodge was the initial owner of the land in question. According to Mr. Sorton, sometime in the 1980s Mr. Samuel Austin Hodge became the registered proprietor. Title to the property was eventually passed to Mr. Sorton's mother. Mr. Sorton himself became the registered proprietor of the land in 1998. His evidence was that, as far as he can recall, Mr. Webster

did not begin using this shop until 1997. He recalls his aunt requesting permission to allow Mr. Webster use of the shop. Since Mr. Webster was a relative, Mr. Sorton states that he had no objections to this.

[8] Mr. Sorton did not reside in Anguilla. Rather, he lived in Saint Martin. He states in his evidence that he would visit Anguilla regularly and would visit the property. During those visits he never saw Mr. Webster but was aware that Mr. Webster had rented the shop. He states that Mr. Webster was living between the Dominican Republic and The United Kingdom at the time. This is a fact which Mr. Webster denies.

[9] Mr. Sorton stated in his affidavit that sometime between 1998 and 2000, Mr. Webster visited him in Saint Martin. He states that Mr. Webster showed him a copy of a document signed by his late aunt in which she granted permission to use the shop. Mr. Webster then stated that Ms. Venetia Hodge wanted him to have the shop. It was Mr. Sorton's evidence that Mr. Webster then presented him with a document requesting that he convey the property to him. Mr. Sorton stated that he informed Mr. Webster that he could not simply transfer title to property which was in his name to Mr. Webster. He refused to sign the document. He states that Mr. Webster then informed him that he had planted coconut trees on the land and wanted to be paid \$70,000.00 for them. Mr. Sorton refused. Mr. Sorton stated that he told Mr. Webster that he was welcome to continue using the land until he was ready for it.

[10] At this stage it is important to address a few issues which emerge from Mr. Sorton's evidence. In his affidavit, he described this encounter with Mr. Webster as having occurred sometime between 1998 and 2000. However, having examined the evidence and hearing both parties at trial, I find that, in fact, this encounter took place in 2015. During his oral testimony, Mr. Sorton himself described this year as the period within which this conversation took place. I also note that at the time of the hearing before the learned registrar, Mr. Webster had presented independent witnesses to verify his occupation of the land. As I stated before, the registrar was satisfied that Mr. Webster had met the requisite test for occupation of the property as contained in the law. I will address the law later on, but it is worth repeating that I see no reason to disturb this finding and I have come to the same conclusion myself.

[11] On the specific issue of this encounter in Saint Martin, Mr. Webster was thoroughly cross examined in the trial before me. He accepted that prior to travelling to Saint Martin to meet with Mr. Sorton, he had been given a document which was prepared by someone by the name of Noreen. Noreen apparently worked at the Land Registry. It appears from the evidence and cross examination that this document was a conveyance which Mr. Webster had taken to Mr. Sorton to sign. It was his evidence, in cross examination, that he was not aware of what was contained in the document. In cross examination Mr. Webster denied that he had been to visit Noreen in order to seek advice on getting the property in his name. He states that Noreen gave him the document but didn't explain to him what it was. He also denied giving evidence before the registrar to the effect that he had visited Noreen with a view to getting advice on how to get this property in his name. Despite Mr. Webster's denial of that fact, he stated otherwise in his own affidavit. I find therefore as a matter of fact that Mr. Webster did communicate with Noreen from the Land Registry and that this communication was to seek advice on how to get this property registered in his name.

[12] Notwithstanding this, in my view, regardless of the motive for visiting Noreen, it appears quite clear to me that Mr. Webster was embarking on a course to acquire title to the property he had at the very least, adversely possessed from the year 1995 when he renovated the building without permission and began renting it out to tenants. That much is a finding of fact I am prepared to make at this point.

[13] It is also important to note that in 2019, Mr. Webster commissioned a report from a surveyor outlining the extent of his occupation of the land. Much was not made in the claim regarding the surveyor's report. The surveyor indicated that Mr. Webster was intent on making an application for adverse possession and that this was the basis of the commission of the report.

The Registrar's Decision

[14] At paragraphs 39 to 42 of her judgment. The learned registrar accepted Mr. Webster's evidence and determined that he had met the criteria for possession. She stated as follows:

It is the Applicant's evidence that his aunt signed a document in 1980 gifting him the house/shop on the property. However, he took possession of the property from about 1995 after making repairs to the building which was damaged by Hurricane Luis. He then rented the property until about 1999 and occupied it as his residence from 2000.

The Respondent does not dispute that the Applicant exercises custody and control over the lands claimed.

In light of the foregoing, the Tribunal finds on a balance of probabilities, that the actions of the Applicant were of such to constitute sufficient control and custody of the area claimed.

[15] The learned registrar then went on to find that Mr. Webster had the requisite intention to possess the property but noted that *"this intention to possess, however, may have been as a result of the belief that the house/ shop on the property belonged to him."* On the question of whether Mr. Webster was in peaceable, open and undisturbed possession, the registrar noted that it was *"clear from the evidence that the Applicant's possession was open and peaceable. It appears from the evidence that the Respondent was aware of the Applicant's occupation. Whilst the Respondent issued notice to the Applicant to vacate the property, he admitted during cross examination that he did not initiate legal proceedings against the Applicant for possession. In fact, the Respondent stated that legal proceedings were unnecessary as him and the Applicant are family."*

[16] It would seem from these findings that the registrar determined that Mr. Webster had met the criteria for adverse possession. However, she went on to state that *"the issue at hand is whether the Applicant, by his own actions, caused interruption."* In light of that, she went on to note the following:

In accordance with section 142(6) of the Act, possession shall be interrupted if someone claiming it in opposition enters upon the land to the

person in possession with the intention of causing interruption if the possessor thereby loses possession; by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

It is the Applicant's evidence that after receiving the notice from the respondent to vacate the property that he visited the respondent in Saint Martin. During that visit, the applicant gave copies of the document signed by his aunt gifting the house/shop to him to respondent. This would appear as though the respondent was justifying his occupation.

Further, the applicant in his response to the respondent's statutory declaration admitted that the land belonged to the respondent while the house belonged to him. During his oral evidence the applicant sought to clarify his statement by stating that the building is his, the property, but it is registered in the name of the respondent.

Additionally, the applicant admitted to taking a transfer form to the respondent in Saint Martin, asking him to sign. However, the respondent did not sign. When asked about the transfer form, the applicant stated that he did not know what was on the form...

- [17] The learned registrar rejected Mr. Webster's evidence where he states that he was not aware of what was on the form. She went on to conclude that the action of taking the form to Saint Martin for Mr. Sorton to sign was not consistent with adverse possession and amounts to an admission that the land was owned by Mr. Sorton. She also made reference of a statutory declaration which Mr. Webster signed and filed in the course of the proceedings before her in which he acknowledged Mr. Sorton's proprietorship. In light of that finding, it was determined that this was an act which amounted to an interruption of prescription.

[18] The learned registrar went on to find that Mr. Webster did not acquire permission to occupy the land in question. Nonetheless, it was also found that, given Mr. Webster's assertion that the building was gifted to him, he therefore accepted that he occupied it as owner and sought to justify his occupation. In relying on the case of **Arnold Celestine v Carlton Baptiste**¹, the learned registrar determined that Mr. Webster could not claim to be in possession of land as of right whilst at the same time being in adverse possession. His claim for the registration of title was therefore rejected.

This Court's Analysis

[19] As I have stated from the introduction to this judgment, I have arrived at a different conclusion to that of the learned registrar. The starting point here is to examine the nature of Mr. Webster's occupation of the land in light of the specific provisions of the legislation. It is therefore important to be reminded of the general principles of law regarding adverse possession. Section 141 of the **Registered Land Act**² states that:

"141. (1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of 12 years, but no person shall so acquire the ownership of Crown land.

(2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor thereof."

[20] In light of the decision of the learned registrar and the submissions put before me, it is important to draw a distinction between acquiring ownership of land by adverse possession and the making of an application to become the registered proprietor of the land. In a proper interpretation of section 141, the two subsections ought not to be conflated. In accordance with subsection one, a person may become the owner of land simply by being in adverse

¹ GDAHCVAP2008/011

² R.S.A. c. R30

possession of the land for a period of 12 years. What subsection 2 provides for is an application to be made to become the registered proprietor of the land on account of the applicant having become the owner by way of adverse possession. The law has long recognized a distinction between ownership and title of and to land. One may acquire ownership in a number of ways, such as by purchase or other conveyance, inheritance or by way of adverse possession. However, one can only acquire title to land by way of registration of one's interest. These are distinct features of the law of possession and ownership of property.

- [21] It is in this regard one comes to consider Mr. Webster's interests. It is important to consider therefore what constitutes adverse possession and whether Mr. Webster had met the criteria in law of being in adverse possession for a continuous period of 12 years. The law is now very clear as to what constitutes peaceable, open and uninterrupted possession. As was stated in the case of **JA Pye (Oxford) Ltd. v Graham**³:

"There are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ('factual possession'); [and] (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess'). What is crucial is to understand that, without the requisite intention, in law, there can be no possession. "

- [22] The House of Lords in that case went on to refer to the judgment of Slade J. in the case of **Powell v McFarlane**⁴. Factual possession was there defined as a circumstance where ***"the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and no one else has done so."*** Slade J went on to state that the requisite intention is ***"an 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***

³ 2002 UKHL 30

⁴ (1977) 38 P & CR 452, Ch D

be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

- [23] To my mind, when one examines the facts of the present case, it is difficult to conclude anything other than the fact that Mr. Webster had met the criteria for proof of actual possession. As did the learned register, I too find that Mr. Webster had been in actual possession of the land. The facts clearly show that although he had initially been given a shop in the 1980s, his actions had gone above and beyond what he had been given permission to do insofar as the land is concerned. There was no evidence presented to me to show that Mr. Webster had taken occupation of the shop before 1995. In that year, he extended the building, including cisterns and other fixtures to the land. What was a shop now contained bedrooms and its size was expanded. This naturally means that additional land space was occupied without anyone's permission.
- [24] Mr. Webster built a concrete roof to the structure. He converted the premises to a residential property and rented it out in his own name. After repairing the building on yet another occasion with no one's permission, he moved into the residence and planted trees and used the surrounding lands to park boats on it for over 15 years. He paid property taxes and had electricity installed in his own name. The evidence suggests that he had done all of this to the exclusion of anyone capable of claiming ownership and possession of the land and that he had not been given permission to do so.
- [25] In my view, a distinction can clearly be drawn between the facts of the case of ***Arnold Celestine v Carlton Baptiste*** and those of the present case. In that case, the respondent claimed to have purchased the property and executed a deed in that regard. When he therefore took possession of the property, he was doing so on the premise that he had actually become the owner in possession by way of deed. It was therefore found that he could not claim to be the owner and in adverse possession at the same time. In the present case, on balance, I find that Mr. Webster took possession of a small shop which was gifted to him in the 1980s. It seems to me to be quite clear that Mr. Webster was never given actual permission to occupy the surrounding land by extended on this building, nor did anyone promise him ownership of the land. I am however prepared to accept that he may have had

some form of a license to operate a shop on the land from the 1980s but there is nothing in the evidence to suggest that he was claiming to be the owner of the land by way of gift.

[26] Over the years Mr. Webster went above and beyond his license and proceeded to act as the owner not only of the building, but of the surrounding lands in question. His extension to the building appears to be additional fixtures to the land and his occupation of the surrounding lands, firstly as a landlord and then as a resident himself is above and beyond any permission or gift which had been granted to him. There is nothing in the evidence here which can amount to Mr. Webster claiming to be in occupation of the land as a rightful owner as opposed to him acquiring prescriptive title to it by adverse possession for a period of 12 years. By stating that he was gifted a shop in the 1980s, Mr. Webster cannot be taken to have been claiming ownership of the land in question as well as being an adverse possessor. His actions over the years clearly show otherwise and I find that he was in actual adverse possession of the property, at the very least from the year 1995 or at latest, 1999, and that he displayed a clear intention to do so as owner on account of this possession.

[27] The question therefore becomes whether there has been an interruption of Mr. Webster's occupation of the premises so as to defeat his claim for prescriptive title. Again, one must first revert to section 141 of the Act. That section makes it clear that if one has been in actual occupation for a continuous period of 12 years one may become the owner of the premises. Counsel for Mr. Sorton argues that because the section uses the word "may" it would mean that the criteria set in the law is not absolute. However, I do not agree with that submission. The section clearly sets out the criteria for what one must do in order to satisfy the registrar that he has become the owner of the parcel of land by way of prescription. It is to the section one must turn, and if the requirements are met and there are no further qualifications placed in the legislation itself, then it is difficult to see the circumstances under which one can argue that an application for prescriptive title should be denied on account of the legislature's use of the word "may." It seems quite clear to me that what he is seeking to register is ownership which he has acquired by being in adverse possession for the requisite period of time. Clearly when the 12 years of adverse possession expired, he was entitled to be registered as the owner on account of his undisturbed occupation for that period of time.

[28] The Act goes on in section 142(6) to make provision for those events which may interrupt prescription. It states as follows:

(a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession;

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

[29] The evidence suggests that Mr. Sorton became the registered proprietor of the land in 1998. At that point he would have been well within his rights to take the necessary steps to interrupt Mr. Webster's occupation of the land prior to him acquiring ownership, as Mr. Webster's adverse possession would have commenced in 1995. But he took no such steps. In 2015, Mr. Sorton gave notice to quit, but even that would have been insufficient to interrupt prescription for two reasons. Firstly, section 142(6) clearly states that this would be insufficient, and secondly, he had written this letter some 17 years after he became the registered proprietor. It is, therefore, in light of subsection (c) did the registrar come to find that Mr. Webster's possession of the property had been interrupted. She found that in taking the transfer form over to Mr. Sorton in 2015, Mr. Webster was acknowledging Mr. Sorton as proprietor of the land. She further found that Mr. Webster's Statutory Declaration and statements he made during the course of the hearing before her amounted to an acknowledgement within the provisions of section 142(6)(c). Indeed, counsel for Mr. Sorton made the same submission before me and it is important to assess Mr. Bourne's submissions in some detail.

[30] In his closing written submissions counsel for Mr. Sorton noted *that "during the course of the proceedings, the issue as to whether an acknowledgment, which took place after the*

effluxion of the time prescribed in the Limitation Act R.S.A. c. L60 for recovery, could have the effect of starting time to run afresh.” Before addressing counsel’s submission on that issue, it is important to note that this is not quite the line of inquiry which was raised by the court during the hearing. The issue is perhaps more precisely stated as whether the provisions of subsection 142(6) of the **Registered Land Act** can be invoked subsequent to the 12 year period as contained in section 141. In other words, the question is whether the prescription can be interrupted after the 12 year period has in fact elapsed? Whilst there are inevitable overlaps between the provisions of the **Limitation Act**⁵ and the **Registered Land Act**, it is important to note that Mr. Sorton has not commenced an action for recovery of possession of the land and Mr. Webster’s application is not based on the provisions of the **Limitation Act**. I will none-the-less examine the submissions put forward by counsel. It is therefore important to highlight the relevant sections of the **Limitation Act** at this stage in order to give consideration to those submissions.

- [31] Section 5(3) of the **Limitation Act** states that *no action shall be brought by any other person to recover any 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 person through whom he claims, to that person...*” Of critical importance to those submissions are the provisions of section 21(1) of the **Limitation Act**. The section states as follows:

Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

(a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

⁵ R.S.A. c. L60

(b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest;

the right is deemed to have accrued on and not before the date of the acknowledgment or payment.

[32] Section 22(1) of that Act goes on to state that “***every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.***” It is worth noting at this stage, that the immediate challenge with reliance on this section is that the evidence does not suggest that the transfer form taken to Mr. Sorton in 2015 was written and signed by Mr. Webster. If this section is to apply, then it can only be the statutory declaration signed in the proceedings for prescriptive title which can meet that requirement. I am prepared at this stage in the judgment to state that it would be wrong for a court, or the registrar, to find that an acknowledgment of proprietorship in proceedings for prescriptive title can interrupt prescription. This is the case as the very basis of an application under section 141 is that it recognizes that the applicant is not the registered proprietor. At that stage he is claiming to have become the owner by adverse possession and is seeking to place his name on the register in lieu of the proprietor. To sift through his evidence for signs of an acknowledgment of proprietorship of the rightful owner would be to undermine the very basis of the application in the first place.

[33] Counsel for Mr. Sorton went on to refer the court to the case of ***Ofulue and another v. Bossert***⁶ and stated the following in his submissions:

It is respectfully submitted that what is nonetheless immediately apparent is that an acknowledgement of title operates to reset the statutory clock. As Lord Scott stated at paragraph 19 “Both a section 29 acknowledgement and a section 29 payment start time running as from the date on which the acknowledgment or the payment was made.” It is therefore further

⁶ [2009] UKHL 16

submitted that even where the cause of action has accrued, and even where time expired, any acknowledgement which comports with the requirements of the Limitation Act, extinguishes the prior period. Accordingly, where there is an acknowledgment "... in writing and signed by the person making the acknowledgment" this meets the stipulations of section 22 (1) of the Limitation Act.

- [34] It is important to assess the peculiar facts of that case in order to place the decision of the House of Lords into context. However, before doing so, and given counsel's reliance on various statements in Lord Scott's dissenting judgment, I highlight one statement of Lord Scott which is not controversial, and which sums up the legal position on the question before me. At paragraph 32 of his judgment, Lord Scott stated that ***"the policy approved by Parliament and enacted in section 29 of the 1980 Act is that title to land should not be lost if, WITHIN THE TWELVE YEAR LIMITATION PERIOD prescribed by section 15, the person in adverse possession has made a written acknowledgement of the title of the owner of the land."*** I say that this statement in a dissenting judgment was not controversial because Lord Neuberger in the majority judgment of that case made a similar statement in paragraph 81 when he noted that ***"the effect of section 15 of the 1980 Act is that a formal record, such as a conveyance or entry on the register, which appears to establish the paper title owner's title against the world, cannot be relied on after twelve years of adverse possession have passed."*** Earlier in his judgment, Lord Neuberger also made the following comment at paragraph 69:

Section 29(2)(a) of the 1980 Act provides that "[i]f the person in possession of the land ... acknowledges the title of the person to whom the right of action has accrued ... the right shall be treated as having accrued on and not before the date of the acknowledgment". However, section 29(7) states that, once the right to claim possession has been barred by section 15(1), it cannot be subsequently revived by an acknowledgment.

- [35] To a great extent, the provisions of the **Limitation Act** in Anguilla are similar to that of the UK. I do appreciate that the local legislation does not contain a provision similar to that of 29(7). However, I am not of the view that the effect of section 5(3) of the **Limitation Act** in Anguilla is to be interpreted any differently. As such, these statements referred to above clearly underscore this court's own position on the matter. The effect of that section is that a proprietor loses his right to commence legal proceedings and claim possession of land once the requisite period of 12 years has elapsed. At the very least, counsel's reliance on this case is undermined by the fact that the UK legislation does not allow for the resetting of the statutory clock after the limitation period has elapsed.
- [36] Notwithstanding this, I note that counsel for Mr. Sorton also ignored the fact that the acts of acknowledgement alleged in the *Ofulue* case would have all taken place prior to the expiration of the 12 year period from the time in which they came into occupation of the premises. When the court therefore refers to time beginning to run again, it is within that context that this particular statement is made. Time begins to run afresh because the 12 year period of adverse possession had not elapsed at the time of the alleged acknowledgment. A closer assessment of the facts of *Ofulue* will help to highlight this issue.
- [37] The Bosserts took possession of the property in 1981. Proceedings were commenced by the Ofulues in 1989. A defence filed in that case in 1989 acknowledged the Ofulues' title and the Bosserts did not claim to be in adverse possession at that point. In any event, it would be clear that the legal proceedings for the recovery of possession of the land would have interrupted the Bosserts' possession of the land as they would then have only been in occupation for a period of 8 years. It is, however, important to note that the proceedings were at one point dismissed. However, in correspondence which was exchanged between the parties in 1991 and 1992, the Bosserts acknowledged the Ofulues' title to the property. The difficulty was that these letters were written without prejudice with a view to settling the proceedings which were commenced in 1989.
- [38] The proceedings did not settle and were, at some point, dismissed on account of delay and inaction. The Ofulues commenced another action in 2003. In defence of that case, Ms. Bossert claimed to have met the requisite 12 year period of adverse possession. By that

time, Mr. Bossert, who was her father, had passed away. This would mean two things. Firstly, that if her adverse possession of the premises commenced in 1981 at the earliest, the letter written in 1992 would have been written only 11 years after her adverse possession of the premises began. Secondly, the Ofulues would therefore be barred from claiming possession due to the requirements of section 29 of the **Limitation Act** unless they were able to rely on the 1992 letter as an acknowledgment within the provisions of that section. The question for consideration in the House of Lords was whether the Ofulues could have relied on the without prejudice letter of 1992 in order to argue that Ms. Bossert had acknowledged their title so as to defeat her defence of adverse possession. The House of Lords decided the case in Ms. Bossert's favour on that point but accepted that had the letter been admissible at trial, it would have served as an acknowledgment within the provisions of section 29 of the Act. However, for the purposes of this case before me, it is important to assess the timelines more closely.

[39] Firstly, it is worth repeating what I have said earlier, that if the period of adverse possession would have commenced in 1981 at the earliest, then it would mean that the 1992 letter would have been written well short of the 12 year limitation period. The 1992 letter acknowledging title would have been written only 11 years from the date on which Ms. Bossert was claiming to have gone into adverse possession of the property. Secondly, this would mean that time would have begun afresh in 1992, not merely because of the acknowledgement but, as Lord Scott noted, it would have been made ***within the twelve year limitation period prescribed by section 15***. If Ms. Bossert remained in adverse possession from that date, then the claim filed in 2003 would have interrupted her possession as with would have been file approximately 11 years after the 1992 letter.

[40] In light of this, the difficulty which I express with this submission of counsel for Mr. Sorton is that the case simply does not stand as authority for the propositions which have been put forward, even if the court were to rely on the provisions of the **Limitation Act**. However, I wish to note that I am also not of the view that this court is to place reliance on the provisions of the **Limitation Act** for purpose of assessing Mr. Webster's application. Mr. Sorton has not filed a claim against Mr. Webster and Mr. Webster is not seeking to use limitation as a shield. He is making an application pursuant to section 141 of the **Registered Land Act** and it is

within the provisions of that act does his application come to be considered. In light of this, I make two points here.

[41] Firstly, one must revert to the specific provisions of section 141(1) of the Act. What that section says is that one may become the owner of property by being in adverse possession for a continuous period of 12 years. It is my view, therefore, that for the provisions of section 142(6) to apply, the possession has to be interrupted prior to the expiration of this 12-year period. After that point there is nothing to interrupt, and the adverse possessor can lay claim to having already obtained ownership of the property as distinct from title to it. He is no longer in the process of obtaining ownership and the registered proprietor would be estopped from denying his claim. There is no question here of time beginning to run afresh because time is simply no longer being counted. Mr. Webster would have met the criteria in section 141 of the Act and there is no longer a question of his possession of the property being interrupted within the provisions of section 142(6) of the Act.

[42] I find that in the circumstances of this case, Mr. Webster had been in adverse possession of the property from 1995 at the earliest and 1999 at the latest. By the time he took this transfer form over to Mr. Sorton 12-year period would have long elapsed. He was therefore entitled to claim ownership of the land at that point. His actions of taking this form to Mr. Sorton cannot therefore be seen as interrupting the period of adverse possession necessary for him to become the owner of the land. Time does not begin to run again merely on account of the acknowledgement of title. That acknowledgment must take place within the 12-year period prescribed by the law.

[43] The second point which I wish to make is that I am not of the view that the taking of a transfer form to Mr. Sorton in 2015 amounts to an acknowledgement pursuant to section 142(6) of the Act. I say so because Mr. Webster would have been right when he stated that what he was attempting to do was acquire title to the land at that point as distinct from ownership of it. It is unclear to me as to precisely what conversation Mr. Webster had with Noreen. In court before me he said he was unsure as to the nature of the document she had prepared for him. However, on balance I find that Mr. Webster's concern at that point was in acquiring title to property he had a right of ownership over by way of his actual and adverse possession of

it for the requisite period of time. One way to do so was to simply have Mr. Sorton sign it over to him. Mr. Sorton refused and Mr. Webster then embarked on the process of obtaining title within the provisions of section 141 of the Act. I see nothing here to suggest that this amounts to an interruption of his possession of the property and I so find that there was no interruption.

[44] As I have also stated earlier, I find that Mr. Webster was not claiming to be the owner of the land in any other right than as an adverse possessor and reliance on the case of ***Arnold Celestine v Carlton Baptiste*** was not well founded, with due respect to the learned register.

[45] In the circumstances, I find that Mr. Webster had made out his case for adverse possession and I therefore order that the registrar is directed to place his name on the register in lieu of the current registered proprietor. Mr. Webster is also entitled to costs in this matter. The 1st respondent will pay costs in the sum of \$7,500.00EC to the appellant.

Ermin Moise
High Court Judge

By the Court

Registrar