

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2021/0004

BETWEEN:

ROYLYN NYACK
(Personal Representative of the Estate of Wilberforce Nyack, deceased)
Claimant

and

TREVOR BOOKER
Defendant

Before:

The Hon. Mde. Justice Agnes Actie
High Court Judge

Appearances:

Mr. Deloni Edwards for the Claimant
Mr. Derick Sylvester for the Defendant

2023: June 26th
December 20th

JUDGMENT

- [1] **ACTIE, J.:** The claimant's claim filed on 4th January 2021 seeks damages for trespass and an injunction restraining the defendant from entering a plot of land situate at Dunfermline Estate, St. Andrew. The court is of the view that the claimant's claim is statute barred for the following reasons given in the judgment.

Background facts

- [2] Wilberforce Nyack, deceased, (hereafter referred to as "the deceased"), became the owner of Two Hundred Acres of land situate at Dunfermline Estate, St. Andrew (hereafter referred to as "the estate") by virtue of a deed of conveyance dated 31st March 1980.

- [3] The claimant, as administratrix of the estate, avers that the defendant is a former worker of the estate, and that in the year 2003, the deceased sold One Thousand Six Hundred Square Feet (1,600 Sq. Ft.) of land situate at the estate to the defendant. The claimant avers that the defendant requested that he be permitted to purchase a further Three Roods and Six Poles (3 Rds. 6 Pls.) of land situate at the estate, but that he never completed the purchase. The claimant avers however that after the defendant's request, the deceased permitted the defendant to plant stools of plantain on the edge of the Dunfermline River on a lot which belonged to the estate.
- [4] The claimant contends that in or about the year 2013, after the death of the deceased, the defendant planted fruit trees between the plantain stools without permission, and that in or about the year 2016, the defendant planted more trees on the strip of the deceased's land, erected pipelines, and is preventing the claimant's workers from accessing the strip of land from the river.

Defendant's case

- [5] The defendant denies that the claimant is entitled to the land in dispute or to claim for the same. He further denies requesting to purchase an additional Three Roods and Six Poles (3 Rds. 6 Pls.) of land situate at the estate as alleged.
- [6] The defendant states that the land which he occupies (hereafter referred to as "the disputed lot") has always been in the possession of his parents, Eileen Booker and Lawrence Booker who worked on the disputed lot exclusively until about 1985 or until their death. The defendant states that afterwards his brother, Davidson Roberts, continued to work on the disputed lot, and subsequently himself. He states that the disputed lot has always been worked since the "Land for the Landless" programme was run by Prime Minister Gairy in the late 1960s, early 1970s. The disputed lot was cut out of a larger lot and given to the defendant's parents for their sole use and occupation.

- [7] The defendant thus avers that he has been occupying the land for more than twenty-eight (28) years without permission from the deceased or any other person. The defendant further contends alternatively that if the disputed lot forms part of the estate, then the claimant's claim is statute barred by virtue of Sections 4 and 27 of the Limitation of Actions Act.

Legal Analysis

Whether the disputed lot forms part of the estate

- [8] The defendant's main contention is that the disputed lot does not form part of the claimant's land. However, the evidence of Licensed Land Surveyor, Godwin Alexis in a Survey Report dated 4th November 2022, states that in the absence of documentation indicating otherwise, the disputed lot, which is a strip of land by the river and the subject matter of this action forms part of the Dunfermline Estate. The court accepts the evidence.

Whether the defendant trespassed on the disputed land

- [9] **Halsbury's Laws of England**¹ sets out the principles concerning trespass as follows:

"A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another."

- [10] It is the claimant's claim that the defendant in 2003 requested the sale of further Three Roods Six Poles (3 Rds. 6 Pls.) but he never completed the sale. Following the request, the defendant was given permission to plant plantains. The claimant

¹ (2021) Vol 97A para 161

asserts that prior to the permission, part of the land was worked by the defendant's parents and the other part by his uncle.

- [11] The claimant states that the disputed lot is part of a larger lot which was divided in two and that the defendant's parents were given a licence to plant on the disputed lot, while the defendant's uncle was given permission to plant on the other lot. This is supported by evidence of Johnson Booker, brother of the defendant and witness for the claimant, which states that his parents, Eileen Booker and Lawrence Booker worked the bottom half of the larger lot, and another family, Everest and Elaine, worked the upper half.
- [12] The claimant states that the defendant's parents were not authorized to harvest cocoa trees along the road of the disputed lot, or the coconut trees or cane thereon, and that no permanent crops were to be planted. The claimant states that these were also the conditions of the permission that was granted to the defendant in his working of the disputed lot after he approached the deceased to obtain same in 2003.
- [13] The claimant states that it was in or about the year 2013, after the death of the deceased that the defendant planted fruit trees, which are permanent trees, on the disputed lot. The claimant further states that in 2016, the defendant planted more fruit trees and ran pipelines from the river onto the disputed lot to water his plants.
- [14] Johnson Booker, brother of the defendant, states that his mother died in 1985 and father in 1995 respectively. He said that he remained on premises and planted short crops then migrated to Trinidad and returned in 1989. Upon his return, he found his elder brother Davidson Roberts in occupation of the land planting crops and rearing pigs followed by the defendant when Davidson stopped cultivating. He further stated that the defendant continued to plant the entire strip after Everest and Elaine's death and committed acts to prevent estate workers from entering the property.

- [15] The court finds on the evidence that the defendant has been in occupation of the land through his parents who had been in occupation of the land prior to the deceased obtaining title to the property in 1980. The licence granted by the previous title owner would have terminated when the deceased obtained title to the disputed lot. It is the evidence that the defendant's parents remained on the property until their demise and occupation continued by their children without challenge by the deceased.

Whether the claimant's claim is statute barred

- [16] The law concerning limitation of actions in a claim for possession of land is contained in **Section 4 of the Limitation of Actions Act CAP 173** which states the following:

"No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he or she claims, or if the right has not accrued to any person through whom he or she claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it."

- [17] Further, **Section 27 of the Limitation of Actions Act CAP 173** states:

"At the determination of the period limited by this Act to any person for making an entry of distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished."

- [18] The defendant states that during the years that his parents farmed the disputed lot, which he avers is sometime in the 1970s, they never paid rent nor accounted to anyone for their use of the land, neither did they acknowledge the deceased or anyone as the owner. He states further that no one made any demands of his parents in relation to their occupation of the disputed land or to seek payment of rent from them.

- [19] Evidence given by Richard Thomas on behalf of the defendant states that he is familiar with the disputed lot as the defendant's mother's land, and that when the deceased bought the estate, the defendant's mother had already been working the land for several years before. He states he remembers her being there when he was a small child. He states that he always knew the land to belong to the defendant's mother and not the deceased.
- [20] Both the claimant and the defendant are in agreement that the defendant and his predecessors occupied the disputed lot, whether with permission or not. The defendant states that he took over the farming of the disputed lot from his brother Davidson for the last 28 years, beyond the limitation period set out in Section 4 of the Act.
- [21] The claimant alleges that it was only from the year 2013 that the defendant began to exercise acts of ownership on the disputed lot by planting permanent fruit trees on the disputed property.
- [22] Johnson Booker confirms the defendant's occupation and the planting both short and permanent crops on the entire strip of land in contention. He failed to give evidence of the year that Everest and Elaine died, or the year he observed the defendant occupying the entire strip of land.
- [23] The issue to be determined is what was the nature of the defendant's occupation at the time of issuing the letter in 2016. The court notes that the letter dated 7th June 2016, issued by the law office of George D Clyne on behalf of the claimant to the defendant referenced an agreement made in 2003 for the sale of an additional lot of land to the defendant which the defendant did not pursue. The letter also asked the defendant to desist from planting permanent crops and other acts of trespass. The purported agreement for sale and the planting of permanent crops are all acts of intended ownership.
- [24] The claimant alleges that the defendant was a licensee. In **Halsbury's Laws of England**², it is stated:

² (5th edn., 2022) vol. 62, para 6

“Since a licence does not create an interest in land, it is not binding upon a successor in title of the original grantor unless the circumstances are such as to give rise to a constructive trust... A gratuitous license is revocable by notice at any time, and is revoked by the death of either party or by assignment of the land over which the license is granted.”

[25] If a licence had been granted by the deceased for the continued possession of the disputed lot such license would have been revoked in 2007 on the death of Mr. Wilberforce Nyack. It is the law that the right of action would have accrued immediately after his death³.

[26] The court finds that the defendant’s occupation and acts of ownership have been buttressed by all the witnesses, possession and occupation that first commenced by his predecessors. The evidence of Johnson Booker, brother of the defendant and witness for the claimant further supports the defendant’s case.

[27] Slade J in **Powell v McFarlane**⁴ and approved by the House of Lords in **JA Pye (Oxford) Ltd and others V Graham**⁵ said:

“If the law is to attribute possession of land to a person who can establish no paper to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”

...

“what is really meant, in my judgment, is that the animus possidendi involves the intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”

[28] The combined effect of Sections 4 and 27 of the Limitation of Action Act is that a claim for possession or right of action dealing with land must be commenced within twelve years of the date of the accrual of the cause of action. The claimant’s cause of action would have accrued from the date the deceased obtained title in 1980 having found the defendant’s parents in occupation of the land. Any license

³ Re Williams, Davies v Williams [1886] 34 Ch D 558

⁴ (1977) 38 P & CR 452

⁵ [2002] 3 AER 865

granted by the previous owner would have been revoked and a right of action would have accrued unless the deceased acquiesced to the continuation of the license. The licence would have been further revoked in 2007.

[29] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrues⁶. Time begins to run against an owner entitled in possession only when he/she has been dispossessed or has discontinued possession and adverse possession of the land has been taken by someone else⁷.

[30] In **Powell v McFarlane**⁸ Slade J defined factual possession as follows:

"(3) ...

The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed., but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[31] In **Wilhelmina McLaren v Leroy Davidson**⁹ Baptiste J, as he then was, citing J. **A Pye (Oxford) Ltd v Graham** held that defendant and his wife occupied the disputed land and made full use of it as owner would have and in such a way as to exclude the owner.

[32] The survey report of Mr. Godwin Alexis dated 21st September 2022 sheds much light on the disputed area and supports the evidence that the defendant has been in possession of the disputed lot and planting permanent crops. The report indicates that the lot in contention occupied by the defendant is cultivated with avocados, plantains and citrus fruits of bearing age.

[33] The authors of **Elements of Land Law**¹⁰, on adverse possession, remark as follows:

⁶ JA Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 WLR 221, 229

⁷ Gordon Charles v Clarie Holas GDAHCV1996/0151

⁸ (1977) 38 P & CR 452 at pp 470-471

⁹ GDAHCV1990.0399

¹⁰ Kevin Gray 2nd Edition

"The rules of adverse possession confirm that possession and title are by no means discrete concepts. Possession is the root of title. Possession of land serves as prima facie evidence of seisin in fee and seisin 'gives ownership good against everyone except a person who has a better, because older title'. However, where the assertion of all older titles is statute-barred, the current possessor's title becomes, for all practical purposes, an unchallengeable title to the land ."

[34] The court applying the law to the facts is of the view that the defendant and his predecessors in title have been in continuous open possession of the disputed lot. It is the evidence that the defendant took full possession of the entire strip of land and has been performing acts of ownership without the claimant's consent and payment of rent. The claim having been filed in 2021 in excess of the twelve year limitation period is statute barred.

Conclusion

[35] For the foregoing reasons, it is ordered as follows:

(1) The claimant's claim against the defendant for trespass is statute barred and is accordingly dismissed. .

(2) The claimant shall pay the defendant prescribed costs in the sum of \$7,500.00.

Agnes Actie
High Court Judge

By the Court

Registrar