

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

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2019/0167

In the Matter of the Title by Registration Act Cap 10.19

And

**In the Matter of an Application by SHENOUDA NEWMAN
to the Court to Remove Caveat against the issue of First
Certificate of Title of the estate of 361,349 square feet or
8.30 acres of land situate at West Farm Estate in the
Parish of Trinity in the Island of St. Christopher**

BETWEEN:

SHENOUDA NEWMAN

Claimant

and

**THE ATTORNEY GENERAL OF
ST. CHRISTOPHER AND NEVIS**

First Defendant

and

THE REGISTRAR OF TITLES

Second Defendant

Before:

The Hon. Justice Tamara Gill

Appearances:

Mr. Sylvester Anthony with him Ms Rénal Edwards for the Claimant

Ms. Nisharma Rattan Mack with her Mrs. Rivi Lake and Ms. Sasha Lloyd for the
Defendants

2023: March 20, 21 and 22;

May 31.

JUDGMENT

- [1] **GILL, J.:** An applicant for a certificate of title to land seeks the removal and discharge of a caveat lodged to defeat the application, and an order for the certificate to be issued.

Background

- [2] The claimant Shenouda Newman ("Mr. Newman") claims that in the year 1976, he and his wife Debbie Newman ("Mrs. Newman", now deceased, together "the Newmans") started occupying, and were in open and undisturbed possession of 8.3 acres of land at West Farm Estate in the parish of Trinity in the island of St. Christopher (St. Kitts).
- [3] On September 28, 2006, the Newmans applied for a First Certificate of Title pursuant to section 12 of the Title by Registration Act ("the Act"), Cap. 10.19 of the Laws of Saint Christopher and Nevis.
- [4] A letter dated December 5, 2006, from the office of the Attorney General, Minister of Justice and Legal Affairs to Mr. Newman's former attorneys, informed that "Government's interest is not affected by the Issue of a First Certificate of Title ..." to the Newmans.
- [5] In a complete turnaround of this position, seven months later, on July 13, 2007, pursuant to Section 16 of the Act, the Attorney General's Chambers lodged a caveat forbidding the issue to the Newmans of a First Certificate of Title on the basis that the government of St. Christopher and Nevis ("the Government" or "the Crown") is the legal owner of the property.
- [6] A hearing in relation to the caveat did not take place and a certificate of title was never issued.
- [7] Interestingly, on June 12, 2019, the Inland Revenue Department issued a demand notice to Mr. Newman for the payment of property tax, including arrears.

Mr. Newman's claim

[8] On June 18, 2019, Mr. Newman filed a fixed date claim form against the Attorney General of St. Christopher and Nevis and the Registrar of Titles ("the defendants") seeking the following orders and/or relief:

- "1. An Order directing the Registrar of Titles to REMOVE and DISCHARGE the Caveat lodged on the 13th July 2007 by the Government of the Federation of Saint Christopher and Nevis against the issue to SHENOUDA NEWMAN and DEBBIE NEWMAN of a certificate of title of the estate of 8.3 acres of Land situate at West Farm in the Parish of Trinity in the island of St Christopher (St Kitts) pursuant to Section 119 of the Title by Registration Act Cap 10.19 of the Laws of Saint Christopher and Nevis;*
- 2. An Order directing the Registrar of Titles to issue a First Certificate of Title to SHENOUDA NEWMAN for 361,349 square feet or 8.30 acres of land situate at West Farm Estate in the Parish of Trinity in the island of Saint Christopher pursuant to Section 12 of the Title by Registration Act Cap 10.19 of the Laws of the Federation of Saint Christopher and Nevis as there is no previous Deed or Certificate of Title to this portion of Land;*
- 3. That SHENOUDA NEWMAN be entitled to damages and/or compensation pursuant to Section 120 of the Title by Registration Act Cap 279 (sic) of the Laws of the Federation of Saint Christopher and Nevis;*
- 4. Costs to the Claimant; and*
- 5. Such further Orders and Directions as the court considers just and as the circumstances of the case warrant."*

[9] Mr. Newman avers that he satisfied the requirements of the Act, showing that he had been in sole and undisturbed possession of the property in issue (hereinafter "the subject lands") for thirty years preceding his application so that he is entitled to a First Certificate of Title. He contends that he has adversely possessed the subject lands. That being so, by operation of law, the owner's (in this case the Crown's) title would be extinguished.

The defendants' position

[10] The defendants oppose Mr. Newman's claim through a number of affidavits in response on the basis that he has not made out the threshold that he has adversely possessed the subject lands nor has he met the requirements to be issued a First Certificate of Title. The defendants state their grounds of opposition as follows:

- i) The Government of St. Christopher and Nevis is the legal owner of the subject lands. These lands are Crown lands.
- ii) Upon Mr. Newman's application for issuance of a First Certificate of Title by virtue of section 12 of the Act, the Government asserted its right to the subject lands.
- iii) The application for the issuance of a First Certificate of Title does not satisfy the requirements of section 12 (9) of the Act.
- iv) Mr. Newman did not in fact dispossess the Government of the subject lands. In fact, he was aware that the Government was the said owner of the subject lands and by his conduct acknowledged this fact.
- v) The lands in the West Farm area were granted to Mr. Newman for the sole purpose of farming and an exchange was affected to facilitate a request by Mr. Newman.
- vi) The Government continued to exercise control over the lands in the West Farm area.
- vii) Mr. Newman has not proved by his application for the First Certificate of Title that he in fact exercised acts of ownership and control over the said 8.3 acres of land that form this dispute.

[11] The defendants therefore are adamant that Mr. Newman ought not to be issued a First Certificate of Title to the subject lands.

Court's observation

[12] The caveat was lodged on July 13, 2007. To date, sixteen years later, there has been no hearing for the caveator to substantiate its claim that the Government is the legal owner of the subject lands and that Mr. Newman is not entitled to a First Certificate of Title. In my view, this raises a significant issue as to the life of the caveat, which Mr. Newman, by his claim, is asking the court to remove.

Issues

[13] The court must determine:

1. whether the caveat lodged on July 13, 2007 is still in effect;

2. whether Mr. Newman has satisfied the requirements of the Act for a First Certificate of Title, including that he was in sole and undisturbed possession of the subject lands continuously for a period of thirty years preceding his application, and is so entitled;
3. if so, whether Mr. Newman is entitled to damages.

Law and analysis

The caveat

[14] The letter dated December 5, 2006, from the Attorney General's office informing Mr. Newman's former attorneys that the Government's interest was not affected by the issue of a First Certificate of Title to the Newmans, appeared to clear the way for a granting of the application. However, shortly before the Government lodged the caveat, it appears that it was alerted to object to a First Certificate of Title being issued to the Newmans. Calvin Esdaille, then Director of Lands and Surveys, in an undated letter received by the Permanent Secretary, Sustainable Development, on July 3, 2007, raised the issue of selling the subject lands valued at \$2.5 million. On the said date, the Permanent Secretary, Sustainable Development, wrote to the Permanent Secretary, Justice and Legal Affairs, requesting urgent advice and assistance to ensure that the objection was pursued "with due diligence and vigour". On that same date, July 3, 2007, the Permanent Secretary, Sustainable Development, also wrote to the Registrar of Titles informing of the objection. Ten days later, the caveat was lodged.

[15] The authorisation to enter a caveat is dealt with in section 16 of the Act which reads:

16. Parties interested may enter caveat

Any person who claims to be proprietor of any land, or to be interested in any mortgage or encumbrance, may enter a caveat in the office of the Registrar of Titles either forbidding the issue of any certificate of title for any land to any specified person, or claiming that a note may be made upon any certificate of title in regard to any mortgage or encumbrance, or in any other manner stating an interest in any land, and such caveat shall be in Form 2 set out in the Second Schedule and the caveator shall be heard before the certificate of title is issued, or the mortgage or encumbrance noted or rejected.

- [16] Section 115 of the Act provides that after the registration of a caveat, and so long as it remains in force, the Registrar of Titles shall not register any dealing with the land embraced therein, until the caveat is removed. The Act does not specify any period for which a caveat is to remain in force. The question arises as to whether the caveat is effective indefinitely until it is removed by the court on an application by the caveatee under section 119 of the Act, or on a determination being made after the caveator has been heard in accordance with section 16. In the absence of a time limit for a caveat under the Act, it appears that the answer can be inferred from section 118 which reads:

118. The caveator may, at any time and without any notice from the Registrar of the receipt of an order of removal from the caveatee, apply to the Court to sustain such caveat, and to order its continuance on the register, either until some question of right has been determined between the caveator and the caveatee, or till such time and in such manner as may be ordered by the Court, and the Court, after such notice to the caveatee or service upon him or her as may be sufficient, may proceed to hear the parties, or, in the absence of the caveatee if he or she does not appear, to deal with the case as may appear just. (Emphasis added)

- [17] Section 118 clearly contemplates that the caveat does not exist in perpetuity, but is renewable on application. There is no evidence before this court that the caveator made any such application to sustain the caveat lodged on July 13, 2007 or to order its continuance. After lodging the caveat, the Government did nothing to further its claim to the subject lands. In my view, it cannot be that the caveat has remained in force for sixteen years without an application and determination by the court that it be sustained or continued. The entering of the caveat necessitated a hearing within a reasonable time for the caveator to put its case as to why the caveatee should not be issued a First Certificate of Title. Even in the absence of a prior application for removal by Mr. Newman, the obligation was on the Registrar or other authorised official to arrange and/or conduct the necessary hearing. To my mind, it is manifestly unreasonable that the caveat should remain in force for all these years by the omission to conduct the hearing. Therefore, I rule that the caveat filed/lodged by the Attorney General's Chambers on July 13, 2007, in the absence of an order sustaining or continuing it, has lapsed by the effluxion of time. In any event, I entertain serious doubt as to whether such an order or orders would have been made for any inordinate length of time.

- [18] Having ruled that the caveat is no longer in effect, it is left for the court to consider (caveat or no caveat) whether Mr. Newman has a right to a First Certificate of Title in respect of the subject lands.

Sole and undisturbed possession continuously for thirty years

- [19] The Newmans applied for a First Certificate of Title on the ground that they had been in sole and undisturbed possession of the subject lands for thirty years preceding the application, that is, that they adversely possessed the subject lands. The applicable provisions of the Act are as follows:

12. Right to first certificate defined and application therefor.

(1) Land not registered under this Act may be so registered -

...

(d) if the land has been in sole and undisturbed possession of the applicant alone in his or her own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any person through whom he or she claims, continuously for a period of thirty years next before the date of the presentation of the request under this Act.

...

(9) Where the application for a first certificate is in any respect based on possession of the land, the request shall be accompanied by affidavits of the applicant and of two other persons at least and such affidavits shall set out in detail the facts establishing that the applicant has been in sole and undisturbed possession of the land continuously for the period of time required by this section as well as the acts of ownership exercised over the land and shall prove that the rents, fruits and profits accruing out of the land have been taken and appropriated by the applicant as owner during such period.

...

14. Possession to be possession as owner

- (1) Possession for the purpose of section 12 shall be possession as owner by a person, his or her heirs, executors, administrators or assigns and not as an encumbrancer holding a life interest or interest or a term of years or other less estate.*
- (2) ...*
- (3) The Judge shall take such evidence of possession by affidavit, or*

payment of taxes, or common repute, or otherwise, as shall be satisfactory to his or her own mind.

Limitation

- [20] Mr. Newman submits that section 6(1) of the Limitation Act¹ disables the Crown from asserting ownership over lands occupied by a squatter after thirty years. The section provides:

No action shall be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or if it first accrued to some person through whom the Crown claims, to that person ...

- [21] Based on the foregoing provision, Mr. Newman contends that once he establishes that he and Mrs. Newman had been in sole and undisturbed possession of the subject lands for at least thirty years before the application, he is entitled to the issue of a First Certificate of Title.

- [22] In accordance with section 16 of the Act, the Attorney General's Chambers entered the caveat which entitled the Government to be heard before the certificate of title is issued. However, Mr. Newman submits that should there be evidence that the land was adversely possessed, therein lies the end of the matter, as by operation of law (section 6 of the Limitation Act), the owner's title would be extinguished. Mitchell J in **Clarke nee Coker v The Attorney-General of St. Christopher and Nevis**² stated:

"The case law is not in dispute. Limitation extinguishes the right of the true owner of the land, so that the squatter's possession becomes impregnable, giving him a title superior to all others, *Buckinghamshire CC v. Moran* [1989] 2 All E.R. 225."

Limitation – a shield, not a sword

- [23] By invoking section 6(1) of the Limitation Act, Mr. Newman is attempting to use its provisions to his advantage without an action, that is, a claim, being brought against him by the Crown. The use of limitation legislation in this manner was frowned upon by the Court of Appeal in the Grenada case of **Arnold Celestine v Carlton Baptiste**.³ In that

¹ Cap. 5:09 of the Laws of Saint Christopher and Nevis

² SKBHCV2000/0026 at page 5

³ HCVAP 2008/011, delivered January 11, 2010

matter, B filed a fixed date claim against C seeking, among other things, a declaration that he was the possessory owner of land. At first instance, the learned trial judge found that C was the paper title owner of the land in question, but held that B had been in open possession for the relevant period under the Limitation of Actions Act of Grenada, and that any right C had to the land had been extinguished by operation of law. In allowing the appeal brought by C, George-Creque JA, as she then was, at paragraph 13 of the judgment, opined:

“In essence, what [B] succeeded in doing was to invoke the **Limitation of Actions Act** as a sword in acquiring a declaration of ownership of the Land rather than using limitation as a shield against any claim made by [C], the paper owner to the Land. Indeed, [C] has brought no claim for recovery of the Land. It is most unusual for statutes of limitation to confer positive benefits or rights on those invoking such provisions. The whole purpose of such statutes growing out of public policy considerations and well recognized over many years, was to bar stale claims, or, put another way, they are designed to encourage the timeliness of claims.”

[24] At paragraph 15 of the judgment, Her Ladyship went on:

“It appears to have been overlooked that these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land – by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.” *(Emphasis added)*

[25] Likewise, Mr. Newman cannot properly pray in aid the Limitation Act to submit that any right of the Crown to the subject lands is extinguished. The Crown has not brought a claim against Mr. Newman. The caveat lodged on July 13, 2017 cannot be equated with an action as contemplated by section 6(1) of the Limitation Act. The use of the limitation provision cannot be used as a sword and its use as a shield does not arise in this case. In order to succeed, Mr. Newman must prove to the satisfaction of the court, that is, on a balance of probabilities, that he was in sole and undisturbed possession of the subject lands for at least thirty years before his application for a First Certificate of Title.

Adverse possession

- [26] The learned authors of Halsbury's Laws of England⁴, explain adverse possession as follows:

Meaning and Effect of Adverse Possession:

No right of action to recover land accrues unless the land is in possession of some person in whose favour the period of limitation can run. Such possession is called adverse possession. What constitutes such possession is a question of fact and degree; there is no general principle that to establish possession of an area of land, the Claimant must show that he made physical use of the whole of it.

- [27] A person claiming title to land by adverse possession must show either:
- (a) discontinuance of possession by the paper owner followed by possession by the claimant or his predecessor; or
 - (b) dispossession – that is, the ouster of the paper owner.

- [28] In **Hector Caesar Luke v Bernard Alexander**,⁵ Rawlins J, as he then was, on the issue of adverse possession, stated:

"The Court will, prima facie, ascribe possession to the paper owner. The Court can only ascribe possession to a person who does not have paper title if that person has factual possession and animus possidendi, the requisite intention to possess the land. Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land. The acts that constitute a sufficient degree of exclusive physical control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. The animus possidendi, has been described as the intention to possess the land to the exclusion of all other persons including the owner with the paper title; so far as is reasonable and so far as the process of law will allow..."

- [29] Mitchell J, in **Clarke nee Coker**,⁶ relied on the seminal case of **Powell v McFarlane**⁷ and opined:

"The word "possession" traditionally means that degree of occupation or physical control, coupled with the requisite intention to dispossess the true owner ... The word dispossession denotes simply the taking of possession in such a sense from another without the other's consent. The defendant must show actual, continuous,

⁴ 4th ed. vol 28 at paragraph 768

⁵ DOMHCV 2001/0161 at paragraph 15

⁶ SKBHCV2000/0026 at page 5

⁷ (1977) 38 P & CR 452

uninterrupted, peaceable, public, unequivocal and sole and exclusive possession of the disputed lands, ..." (Emphasis added)

[30] In a judgment on applications for First Certificate of Title by **Bernadine Forbes and Alford Wattley**,⁸ in the Nevis Circuit of this jurisdiction, at paragraphs 35 to 37, the court was also guided by the dicta in **Powell v McFarlane** and stated:

"[35] The evidence presented on his behalf must show that possession was factual and that there was the requisite intention to possess or **animus possidendi**.

[36] Slade LJ defined factual possession in **Powell v. McFarlane** as single and exclusive possession, signifying an appropriate degree of physical control. It is not sufficient to establish possession concurrent with the paper owner. If the person claiming by possession, establishes possession in the full sense of exclusive possession, that by itself connotes the absence of possession on the part of the paper owner. The question as to what acts would be found to constitute a sufficient degree of exclusive control depends entirely on the circumstances of each case.

[37] With regard to animus possidendi, [what] a claimant must show for the purposes of his claim is not an intention to own or even an intention to acquire ownership. The only intention that must be demonstrated is an intention to exercise control over the land for oneself and to occupy and use it as one's own. The intention must be to unequivocally exclude the world at large, including the owner with paper title, so far as is reasonably practicable and as the process of law will allow. However, there need not be a conscious or deliberate intention to exclude the paper owner, just an intention to exercise exclusive control."

[31] In **JA Pye (Oxford) Ltd v Graham**⁹, the House of Lords stated that legal possession by the adverse possessor requires the following:

- (i) a sufficient degree of physical custody and control (factual possession), and

⁸ NEVHCV2004/0031 & NEVHCV2005/0159

⁹ [2003] 1 A.C. 419

- (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess, or animus possidendi).

[32] The burden of satisfying the court that the true owner of the subject lands was dispossessed lies with Mr. Newman. He must show occupation and use of the land of a kind that is inconsistent with the owner's enjoyment.¹⁰ Mr. Newman points out that the Government does not have and did not produce in evidence at the trial a certificate of title or any other form of paper title in relation to the subject lands. Defence witnesses Dwight Francis, a licensed land surveyor and Director of Lands and Surveys, and Conrad Kelly, agricultural consultant, in their *viva voce* evidence, stated that the subject lands were "vested" in the Crown. However neither of them produced any documentary evidence to support their assertions. In **Clarke nee Coker**, the court held that where the possession which the claimant seeks to maintain is against a defendant who never had any title to the land, the slightest amount of possession would be sufficient.¹¹

[33] The defendants assert that the Government is the true owner of the subject lands, which are former St. Kitts Sugar Manufacturing Corporation (SSMC, a government owned corporation) lands, part of the West Farm Estate. They explain that the manufacturing of sugar was the main economic driver within the Federation up until the official closure of the industry in August 2005.

[34] The defendants further explain that due to the decline in production, the Government, in a recovery attempt, agreed to purchase certain sugar lands. This was enabled by the Purchase of Sugar Estates Land Agreement Act.¹² This was inclusive of the West Farm area. These lands were still managed through the SSMC and as production declined, lands were assigned to the Ministry of Agriculture for farming purposes. By virtue of section 2 of the Government Lands Regulation Act,¹³ all lands acquired by the Government are vested in the Governor-General. On the information before the court, I

¹⁰ See *Clarke nee Coker* at page 6 and Caveat No. 314 of 2012 *Annette P. Loerner v. Colin Anthony Lees and Another* at paragraph 40

¹¹ At page 5

¹² Cap. 10:14 of the Laws of Saint Christopher and Nevis

¹³ Cap. 10:06 of the Laws of Saint Christopher and Nevis

conclude that the Government of St. Christopher and Nevis is the legal owner of the subject lands.

- [35] I note here that prior to trial, there appeared to be some confusion on the part of the defence as to the identification of the subject lands. Some of the internal Government correspondence and documents exhibited concerned land to the south of the subject lands. During the trial, it became clear that these parcels did not form part of the subject lands.

Factual Possession and Intention to Possess

- [36] In demonstrating physical control over the subject lands, Mr. Newman's evidence is that he started occupying the subject lands in 1976. He cut down trees and bushes, planted crops, reared animals, erected a house for which he did not receive planning permission and where he and his family reside, and installed electricity. In cross-examination, he told the court that he continuously farmed the 8.3 acres, at one time leaving five acres "to replenish itself". He contends that he farmed on eighty per cent of the subject lands.
- [37] James Buchanan ("Mr. Buchanan"), licensed land surveyor, architect, appraiser and project manager surveyed and produced a plan of the subject lands as pointed out to him by Mr. Newman. The survey is dated May 23, 2006. Mr. Newman's evidence in cross-examination is that he did not know the size of the subject lands until the survey was done.
- [38] Mr. Newman stood firm in his position that in all those years before the application, his occupation of the subject lands was uninterrupted for the thirty-year period. His evidence is that save for the letter of December 5, 2006, which communicated that the Government's interest was not affected by his application, he did not receive any other communication from the Government regarding his and his wife's use and occupation of the subject lands. In fact, defence witness Elrether Simpson Browne, Permanent Secretary (at the relevant time in the Ministry of Sustainable Development) admitted, under cross-examination, that she had not found any document before 2006 in relation to the 8.3 acres, save for the request for First Certificate of Title.

- [39] On the evidence before the court, I find that the Newmans enjoyed sole, undisturbed and continuous possession of at least part of the subject lands for a number of years. The evidence Mr. Newman presented of cutting trees and bushes, planting crops, rearing animals, constructing a house where he and his family reside, and installing electricity show not only mere occupation, but demonstrate a sufficient degree of physical custody and control to constitute factual possession.
- [40] I do not include in this conclusion the fact that in June 2019, the Inland Revenue Department issued a demand notice to Mr. Newman for the payment of property tax in respect of the subject lands. Norvin Rawlins, Chief Evaluation Officer in that Department, stated that a search revealed that the Newmans registered the subject lands on June 12, 2006, that is, before their application for a First Certificate of Title. The property was entered into a database that automatically generates a demand notice on a yearly basis. Mr. Rawlins testified that it is not unusual for squatters to be registered, and in such cases, they are refunded. I note that the payment of taxes in respect of disputed land “does not by itself, advance a claim founded on adverse possession”.¹⁴
- [41] Whereas Mr. Newman sought the Government’s permission to use and occupy other parcels of land, I accept that he did not do so in respect of the subject lands. I am also satisfied that he showed an intention to exercise exclusive control, making use of the land inconsistent with the Crown’s enjoyment.
- [42] The uphill task for Mr. Newman is to prove (i) that he dispossessed the Crown of the entirety of 8.3 acres of land, a vast area of land going farther than the eye can see (standing in the area of the dwelling house), as evidenced during the court’s visit to the *locus in quo*, and (ii) that he was in possession of the land for at least thirty years before he applied for a First Certificate of Title. The quantity of land and the period of time present the primary issues to be resolved.

¹⁴ See Commonwealth Caribbean Property Law, Gilbert Kodilinye, Fourth Edition, at page 232

The Quantity of Land

- [43] The defendants posit that 8.3 acres (361,349 square feet) of land is an extremely large expanse of land, and that Mr. Newman has failed to establish sufficient physical custody and control over the entire plot of land. Under cross-examination, Mr. Newman indicated that he farmed about eighty percent of the land, and that his house is only fifty feet by twenty-five feet in size. The court's visit to the *locus in quo* revealed that Mr. Newman's house is a relatively small abode. Mr. Newman further admitted that the only electricity installed on the property was to his home. There is no other electricity supply on the remainder of the property.
- [44] Mr. Newman admitted that he only occupied a portion of the subject lands, and some of the land was just grasslands. He stated that he did not have a fence around the entire expanse of land to stop anyone including the owner from entering the land. Instead, a temporary fence was partially placed on a portion of the property to keep in grazing animals.
- [45] The defendants point out that Mr. Newman admitted that he did not keep any records of his farming outputs nor proffered the actual size nor scale of his farming activities. He stated that he had only two workers on the entire 8.3 acres of land. The affidavit evidence of James Buchanan, who surveyed the subject lands, is that the subject lands included two acres on which Mr. Newman's house stood, and an additional 6.3 acres, which did not include his farm.
- [46] I have already determined that the Newman's were in adverse possession of at least part of the subject lands for a certain period of time. Having considered the evidence, including a site visit, I am not satisfied that the Newmans exercised physical control over the entire 8.3 acres of land. Mr. Newman has produced insufficient evidence to convince the court of this. The question arises as to whether the acts of usage exercised over part only of the subject lands, can constitute adverse possession of the whole.

- [47] The Privy Council gave invaluable guidance on this issue in **West Bank Estates Limited v Shakespeare Cornelius Arthur and Another**,¹⁵ a case out of then British Guiana. Gilbert Kodilinye, in his text Caribbean Commonwealth Property Law,¹⁶ summarises that point in the case as follows:

“The second issue that arose in this case was whether proof of the respondents’ user of part of the land was evidence of their possession of the whole. Lord Wilberforce stated that the true question was as to the extent of the land the respondents did in fact use and occupy, and, in determining whether acts of use of part could be evidence of possession of the whole, a distinction had to be drawn between, on the one hand, an area of land surrounded by hedges, and, on the other, one that lacked defined boundaries. In the former, acts done in one part would be evidence of the possession of the whole, but in the latter, no such inference could be drawn. In the present case, the boundaries of the land were undefined, and Bollers J was correct in finding that there was insufficient evidence of possession of the whole by the respondents.”

- [48] Mr. Buchanan surveyed the subject lands pointed out to him by Mr. Newman in 2006. Prior to this, except for a temporary fence made of wire and sticks on a portion of the land, the boundaries were undefined. Therefore, on the evidence, including the lack of evidence of defined boundaries of the subject lands, the court cannot conclude that the Newmans were in possession of the entire 8.3 acres of land before the application for a First Certificate of Title.

Possession for Thirty Years

- [49] Whereas Mr. Newman points out that nowhere in Government correspondence is issue taken as to his possession of the subject lands for the requisite period under the Act, the burden is on Mr. Newman to prove that he was in possession for thirty years before the application for First Certificate of Title. At trial, the only evidence that the Newmans were in possession of the subject lands for at least thirty years before their application for a First Certificate of Title is that of Mr. Newman. He states that they started occupying the subject lands in the year 1976. He does not state a specific month. Strictly speaking, to qualify to apply, his occupation should have started thirty years before September 28, 2006, that is, on or about September 29, 1976. Being the latter part of the year, the court will not nitpick as to Mr. Newman’s assertion that he was in possession for thirty years

¹⁵ [1967] AC 665; [1966] UKPC 16

¹⁶ Fourth Edition at page 235

just because he has not pleaded or given evidence of the exact date in 1976, when he claims to have begun his occupation of the subject lands.

- [50] In addition to his testimony, Mr. Newman exhibited the affidavits in support of his (and his wife's) application for First Certificate of Title. I take the liberty of repeating the earlier quoted section 12 (9) of the Act. It reads:

(9) Where the application for a first certificate is in any respect based on possession of the land, the request shall be accompanied by affidavits of the applicant and of two other persons at least, and such affidavits shall set out in detail the facts establishing that the applicant has been in sole and undisturbed possession of the land continuously for the period of time required by this section as well as the acts of ownership exercised over the land and shall prove that the rents, fruits and profits accruing out of the land have been taken and appropriated by the applicant as owner during such period. (Emphasis added)

- [51] The period required by the section is thirty years as provided in section 12(1)(d).
- [52] On September 28, 2006, the Newmans filed their "Affidavit in Support of Request for Issue of First Certificate of Title". The affidavit was sworn on June 13, 2006. In the first paragraph of the affidavit, the Newmans averred that they had been in undisturbed possession of the subject lands for "upwards of 28 years". Nowhere in that affidavit is stated details of facts to establish that the Newmans were in possession of the subject lands.
- [53] The affidavits of Reginald George and Raymond Guishard in support of the Newmans' application do not assist Mr. Newman in this matter. Reginald George swore his affidavit on September 27, 2006. It is so manifestly deficient for the purpose of the application that a reproduction of its four paragraphs will do little to expand this judgment. Mr. George swore:

"1. *That I personally know Shenouda Newman and Debbie Newman of West Farm Estate, St. Kitts and I am also well acquainted with the lot of land of the extent of 361,349 square feet or 8.30 acres of land situate at West Farm Estate in the Parish of Trinity in the island of Saint Christopher for which an Application for the issue of a First Certificate of Title is being made.*

2. *That I have known the Newman's (sic) to have been in open, quiet and undisturbed occupation thereof for some 18 years reaping the benefits and profits thereof and so remain to this present time.*
3. *That I know of no one claiming to have purchased the said lot of land or claiming any interest in the said land.*
4. *That I was born on the 15th day of November, 1954."*

[54] The four paragraphs of the affidavit of Raymond Guishard sworn on September 26, 2006 are identical to Mr. George's, except that the period of the Newmans' occupation of the subject lands is stated as "some 20 years" and Mr. Guishard was born on the 6th day of December 1964.

[55] A supplemental affidavit in support of the Newmans' application was sworn on April 13, 2007 by one Cecil Green. In similar vein, Mr. Green swore as did the other two affiants, stating his date of birth as March 17, 1919. He was the only one averring that the Newmans were in occupation of the subject lands for "some 30 years".

[56] Whereas the Newmans' application was in order in respect of other requirements under the Act, the same cannot be said for the affidavits in support of the application. Save for the supplemental affidavit of Cecil Green, none attests to the requisite thirty years of occupation for entitlement to a certificate. There is complete non-compliance in demonstrating by detailed facts the acts and circumstances showing that the Newmans occupied the subject lands. The affidavits are adequately described by the defendants as generic. There was no need for the defence to challenge this woefully inadequate evidence. In fact, in my view, this evidence favours the defence.

[57] Nevertheless, the defendants ask the court to reject Mr. Newman's claim in this regard. They posit that in 1976, the West Farm Estate formed part of the sugar estates and was utilised solely for sugarcane production.

[58] The affidavit of Conrad Kelly revealed that he was the Agricultural Manager overseeing all the cane field operations. He states that he has known Mr. Newman for almost fifty years. It was his sworn evidence that Mr. Newman did not have a housing structure either on the cane land or lands adjacent to the cane lands from 1976. It is only in the

late 1990s that he constructed a farm shed on the property above the lands he was farming. Mr. Newman admitted under cross-examination that he did have a farm shed.

[59] The defendants submit that this evidence is consistent with the official cadastral images held and maintained by the Department of Lands and Surveys that form part of their records. They ask the court to carefully consider these images as they are crucial to the mapping and planning and distribution of lands within the Federation and are taken every ten years. Dwight Francis, the Director of Lands and Surveys, testified as to the authenticity of these images, and that he has direct physical control of these records held at the Department of Lands and Surveys. The images were taken from an airplane of the entire island by international consultants in collaboration with the Department of Lands and Surveys. The coordinates in the margins identify the exact location of the images as stated by Dwight Francis during the trial. The defendants aver that these images also provide the court with an exact timeline of the lands that form the subject of this dispute. The cadastral images demonstrate that up to 1981, there were no signs of any structure on the subject lands. The cadastral images of 1968 also show that these lands were prime sugar lands.

[60] Further, the defendants highlight and rely on a land application submitted by Mr. Newman to the Ministry of Agriculture Lands and Housing in 1990 in which Mr. Newman listed his present address as Malone Avenue as of September 10, 1990.

[61] Given the foregoing, the defendants aver that Mr. Newman did not in fact occupy the land from 1976 but instead only from the late 1980s, early 1990s. The defendants argue that Mr. Newman could not have been physically in possession of the subject lands in 1976 as these lands were solely allocated to the production of sugar. They calculate that from the late 1980s, early 1990s, Mr. Newman would have been on the land for about sixteen to eighteen years, and submit that his claim should fail as he has not met the legal requirement of thirty years.

[62] Mr. Newman asks the court to disregard the aerial photographs exhibited by Dwight Francis and give them no weight for the following reasons, all of which were admitted by Mr. Francis in cross-examination:

- a) Although the photos at certain pages are labelled “St. Kitts” or “St. Christopher and Nevis”, they do not state where in St. Kitts is being shown;
- b) The photos at certain pages do not state what country or where in that country is being shown; and
- c) Mr. Francis did not take these photos nor was he present when the photographs were being taken from an aircraft and as such cannot certify that these photos are of the West Farm area.

[63] Mr. Francis also relied on photographs of the land taken in 2022 to support his assertion that Mr. Newman had not utilized the entire property except the portion on which his home is built. Mr. Newman submits that this is wholly erroneous. The Newmans’ application was presented in 2006. Therefore, to support his assertion, Mr. Newman argues that Mr. Francis would have had to present photos taken by him in 2006 and prior. He submits that Mr. Francis cannot rely on photographs or his observations in 2022 as evidence of the state of affairs at the time the application was made, and the court ought to pay no attention to Mr. Francis’ evidence in this regard.

[64] As the Director of Lands and Surveys, in whose Department aerial photographs are maintained and stored, I am of the view that Dwight Francis is in a position to authenticate the images he exhibited in evidence. Notwithstanding the absence of the specific identification of areas in St. Kitts, or St. Kitts at all, coordinates used suffice as accurate indicators. I accept Mr. Newman’s submission that photographs or images taken in 2022 cannot be evidence of the state of the subject lands in 2006 or prior.

[65] Having submitted what is, in my view, a refusable application for a First Certificate of Title, Mr. Newman is asking this court to find that he was in sole, undisturbed and continuous possession of the subject lands for at least thirty years before his application. Respectfully, Mr. Newman’s application was filed by his former attorneys who were obligated to file the application in accordance with the provisions of the Act. Had Mr. Newman been in sole and undisturbed possession of the subject lands for the requisite

thirty-year period, that would have been glaringly alleged in the application. The Newmans' own affidavit failed to show this crucial requirement. Therefore, at this stage of the matter, I do not find Mr. Newman's evidence that he was in occupation of the subject lands for at least thirty years preceding his application to be credible.

- [66] Further, under cross-examination, Mr. Newman told the court that when Mr. Buchanan did the survey dated May 23, 2006, he was on the land for twelve and a half years. His evidence is that after some time being on the land, he spoke with one Mr. Warner, the Director of Inland Revenue, who put in his head that he was the owner of the subject lands, having been there for over twelve years. It is unclear when this conversation took place but Mr. Newman says that is when he thought of getting a surveyor. Notwithstanding Mr. Newman's contention that he occupied the subject lands for thirty years prior to the application, the court's impression, having heard and observed the demeanour of Mr. Newman, is that he believed, based on what he says Mr. Warner told him, that the requisite time period for adverse possession is twelve years.

Conclusion

- [67] In light of the evidence and the applicable law, I hold that Mr. Newman has not satisfied the requirement of sole and undisturbed possession of the subject lands or any part thereof continuously for a period of thirty years before his application for a First Certificate of Title, and he is not so entitled. Having found that the caveat lodged on July 13, 2007 is no longer in effect as there was never an application to continue or sustain it, there is no need for an order directing the Registrar of Titles to remove and discharge it. Mr. Newman is not entitled to an order directing the Registrar of Titles to issue a First Certificate of Title to him for the subject lands.

Order

- [68] Based on the foregoing, it is hereby ordered as follows:
- 1) The caveat lodged on July 13, 2007 by the Government of Saint Christopher and Nevis against the issue to Shenouda Newman and Debbie Newman of a certificate of title of the estate of 8.3 acres of land situate at West Farm in the Parish of Trinity in the island of St. Christopher pursuant to section 119 of the

Title by Registration Act Cap 10.19 of the Laws of Saint Christopher and Nevis lapsed and is no longer in effect.

- 2) Mr. Newman's claim for an order directing the Registrar of Titles to issue a First Certificate of Title to him for the said land pursuant to section 12 of the Title by Registration Act Cap. 10.19 of the Laws of Saint Christopher and Nevis is dismissed.
- 3) Mr. Newman shall pay the defendants prescribed costs on an unvalued claim pursuant to CPR 65.5 in the sum of \$7,500.00.

Tamara Gill
High Court Judge

By the Court

Registrar