

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

CLAIM NO: AXAHCV2021/0043

Between

IJEOMA NWOKEJIOBI

Claimant

-and-

**WARREN FLEMING
TODVILLE HARRIGAN**

Defendants

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mrs. Tona Simpson-White of counsel for the Claimant
Mrs. Jacinth Jeffers of counsel for the defendants

2022: October 20;
November 9;
2023: March 31.

Decision

[1] **Moise, J.:** On 2nd September 2021, Ms. Ijeoma Nwokejiobi filed a Fixed Date claim seeking an order for possession of that parcel of land situated at Island Harbour, Anguilla and Registered in the Land Registry of Anguilla in Section East Central as Block 89218 B Parcel 17. Ms. Nwokejiobi also seeks a declaration that the defendants are not entitled to enter or cross the property and an injunction restraining the defendants whether by themselves or their servants or agents or otherwise howsoever from entering or crossing on her land. She also seeks an order for damages together with interest and costs. The claim is defended on the basis that both defendants have been in adverse possession of the portions of

the land which they each claim to occupy for a period of in excess of twelve (12) years.

- [2] Having examined the evidence and considered the pre and post-trial submissions of counsel, I have rejected the defence of adverse possession and determined that Ms. Nwokejiobi has made the case for her entitlement to possession of her land and the remaining orders which she seeks; save for that of damages for trespass. These are the reasons for my decision.

The Facts

- [3] It is not disputed that Block 89218 B Parcel 17, is owned by Ms. Nwokejiobi. It is also not disputed that each of the defendants now has personal items stored or placed on various portions of the land. What is substantively in dispute however is whether each of the two (2) defendants have been in actual possession of these individual portions of the land so as to allow them to defeat Ms. Nwokejiobi's entitlement to possession as proprietor.
- [4] Ms. Nwokejiobi became the registered title owner of the land by way of conveyance dated 25th July, 2020. Prior to that the land had been initially owned by her great-grandmother, Ms. Florence Drucilla Webster. Ms. Webster died on 13th July 1989 and Vivian Rosebud Smith was granted letters of administration in her Estate. The property was therefore subsequently transferred to Vivian Smith as Administratrix of the Estate of Florence Drucilla Webster. Vivian Smith is Ms. Nwokejiobi's great aunt.
- [5] According to the evidence, the property was transferred to Ms. Nwokejiobi's grandfather, Mr. Clive Webster, on 22nd June 1999. Clive Webster however passed away on 15th May, 2004. Subsequent to his passing, the property was transferred to Gloria Rogers, who I understand to have been the lawful attorney for Mercedes Pamela Webster, who in turn is Ms. Nwokejiobi's aunt and the

daughter of Clive Webster. I also understand that Mercedes Webster was personal representative of the estate of Mr. Clive Webster. The transfer to Ms. Webster was effected on 16th March 2011.

- [6] After family discussions were held, it was agreed that the property should be conveyed to Ms. Nwokejiobi and that transfer was completed on 25th June, 2020. Ms. Nwokejiobi states in her affidavit that sometime after obtaining title to the property she observed that there were concrete blocks along the western boundary. She also observed that to the eastern side of the property were the personal belongings of the first defendant such as containers, buckets and the like.
- [7] Insofar as the boundaries of Ms. Nwokejiobi's property are concerned, it is bounded on the eastern and western side by properties owned by the defendants. The First Defendant, Mr. Warren Fleming, is the owner and occupier of the adjoining land towards the east of Ms. Nwokejiobi's property. Mr. Fleming's land is registered in Section East Central as Block 89218 B Parcel 307. The second defendant, Mr. Todville Harrigan is the owner and occupier of the adjoining land towards the west of Ms. Nwokejiobi's property. This parcel is registered in Section East Central as Block 89218 B Parcel 49.
- [8] Ms. Nwokejiobi states that prior to the completion of the transfer of her own lands to her, she commissioned a survey of her property. She engaged the services of Mr. Cleveland Richards, licensed land surveyor to locate, identify, demarcate and replace boundary markings to her property where necessary. On 19th December 2020 Mr. Richards visited the property to conduct a preliminary survey. Mr. Todville Harrigan was present along with Ms. Nwokejiobi and the surveyor. Ms. Nwokejiobi asserts that a Notice to Enter Land was served on Mr. Harrigan by Michael Fleming, Assistant Court Bailiff. This notice indicated an intention to survey the land on 19th February, 2021 at 9:00 a.m. Mr. Harrigan was therefore invited to witness the process. Ms. Nwokejiobi asserts that Mr. Harrigan, having

been served, did not attend but rather threatened to remove any boundary markers which were set down by the surveyor.

- [9] Ms. Nwokejiobi's evidence is that after completion of the survey she requested that both defendants remove the items they had placed on her land. They both refused, claiming that the items were in fact on their own land, notwithstanding the boundary markings which had been placed by the surveyor. The dispute had then taken a rather contentious course; to the extent that the police had to intervene on at least two occasions. Ms. Nwokejiobi therefore seeks the court's intervention in obtaining full possession of her land.
- [10] Mr. Todville Harrigan states that the portion of land along his boundary, which is the subject of Ms. Nwokejiobi's claim, is owned by him. He states that he has been in occupation of this strip of land for over forty (40) years. He states that he has been in possession of his own property from the 1970s and that included the strip of land which currently forms part of Ms. Nwokejiobi's land. In his evidence Mr. Harrigan states that he used that strip of land to plant peas and fig trees. He had a garden on that land. For the last fifteen (15) years he has stored concrete blocks on the land. Mr. Harrigan states that neither Mr. Clive Webster, nor anyone associated with the land, ever disturbed his possession. He states that Ms. Nwokejiobi's land was demarcated by a chain-linked fence. The strip of land which he occupies is outside of that fence. Despite this, I do note that there is no dispute that the boundaries of Ms. Nwokejiobi's land extend beyond the fence. It would therefore not be accurate to state that her lands are demarcated by a chain-linked fence.
- [11] Although Mr. Harrigan claims in his affidavit that he had placed concrete blocks on the land for the last fifteen (15) years, he indicated in oral testimony that the blocks were placed there in 2008. If that were the case, then, as at the date of his affidavit, these blocks would not been on the land for 15 years as he had claimed. When the 2011 aerial map of the area was put to him, Mr. Harrigan acknowledged that there was no sign of blocks or cultivation on the strip of land

in question. He does however refer to a pile of dirt. He also states that there was not a significant level of cultivation now since the blocks were placed there. Mr. Harrigan stated that the survey must be a lie as the blocks were placed there in 2008. He also states that he had placed dirt on the land and that was where he used to cultivate. However, there is no cultivation discernable on the 2011 aerial map.

- [12] I also observe that Mr. Harrigan had not necessarily been consistent in his own testimony regarding how he allegedly came to occupy this land and what he knew about the boundaries. He suggested at one point in his cross examination that after Mr. Webster's property was fenced, he assumed that the lands outside of the fence belonged to him. I took that to mean that it was his mistaken belief that Mr. Webster had fenced the entirety of his property. He stated at one point in cross examination that he was unaware as to where the boundary was supposed to be before it was surveyed. Again my understanding of that evidence, if it is to be accepted as the truth, was that Mr. Harrigan may have been of the mistaken belief that the property outside of the fence formed part of his own land and within his own boundaries.
- [13] On 10th August, 2021, Mr. Harrigan filed an application with the Registrar of Lands to be registered as the proprietor of the land on account of his years of undisturbed occupation. That would have however been after Ms. Nwokejiobi had demanded possession of that portion of her land.
- [14] Mr. Warren Fleming, the first defendant, filed his affidavit in reply on 15th October, 2021. He states there that he has occupied the portion of land along the western boundary being claimed by Ms. Nwokejiobi for over thirty-seven (37) years. The strip of land being claimed by Ms. Nwokejiobi is located to the back of Mr. Fleming's house. He states that he acquired his own property at age nineteen (19) and began constructing his house at age twenty (20). Mr. Fleming asserts that from the time of the construction of his home, he has been in possession of the

land being claimed. That would have been in or around 1984 when he placed a storage shed on the land. He therefore accepts that he has material and other items stored on the land but asserts that it is in fact his land on account of the fact that he has occupied it for in excess of thirty-seven (37) years. Mr. Fleming also asserts that this possession has been undisturbed for that period of time, until Ms. Nwokejobi's demand that he vacate the property. According to him, everyone in the neighbourhood was aware of him building his house and knows the area now being claimed as forming part of his backyard.

[15] Mr. Fleming asserts that even Mr. Clive Webster, who lived on Parcel 17 at the time, did not disturb his possession. For that reason he never saw a need to formally apply to the Registrar of Lands for title to the property. Since Ms. Nwokejobi's claim to entitlement, he has now filed an application with the Registrar. However, this application has not been considered due to the ongoing litigation in this case.

[16] In support of their individual assertions of possession of the various strips of land, the defendants have led evidence from various witnesses. Mr. Albert Smith appeared at trial and asserted that he has known Mr. Harrigan to be in ownership and occupation of his property for over forty (40) years. Mr. Smith is himself now over seventy (70) years old and has been a friend of Mr. Harrigan for many years. He frequents the area when going to work on a daily basis. He also asserts that he is aware that Mr. Harrigan had also occupied a portion of Parcel 17 for as many years as he has occupied his own property. He is aware that Mr. Harrigan planted various crops on the property and that there has been concrete blocks placed on that land for over fifteen (15) years.

[17] It was Mr. Smith's evidence that he was asked to deliver material onto the property on two occasions for Mr. Harrigan. He could not however remember the dates of those deliveries. He did not even go so far as to refer to the year in which he had made those deliveries. Mr. Smith insisted in cross examination that he knew two of the boundary markers to the property. However, it was also his

evidence that the concrete blocks were placed on the property for over fifteen (15) years. A fact which does not appear to be substantiated by the evidence in total. Even Mr. Smith could not explain why the aerial survey would not show the presence of blocks in 2011.

[18] Mr. Kevin Hodge, who is now fifty-two (52) years old also appeared before the court. His evidence was in many ways identical to what Mr. Smith had to say. It is therefore not necessary to repeat the content of his affidavit in any detail. In cross examination Mr. Hodge appeared to have waived somewhat as to how long the blocks had actually been placed on Parcel 17. He was shown the aerial photographs of the area dating back to 2011 which do not show any blocks to be on the land. He stated in reply that he was not sure what had been said in his affidavit and that he only came to court to show that he had known Mr. Harrigan for a long time. He however went on to state that whilst he wasn't sure how long the blocks had been on the land, but they were in fact placed there for more than ten (10) years.

[19] The defendants led evidence from two licensed land surveyors. Mr. Cecil Niles presented a report dated 21st March, 2022. He states in it that he was instructed to review the boundaries between Parcels 307, owned by Mr. Fleming and 17, owned by Ms. Nwokejiobi. In his conclusions, Mr. Niles simply states that the southwestern corner of Mr. Fleming's house was placed exactly on the western boundary separating the two properties. Mr. Niles states that the area which Mr. Fleming claims to occupy amounts to 1,216 square feet of Parcel 17. Mr. Niles was unable to state how long the fence had been in that position.

[20] Mr. Gifford Connor also gave evidence. Having examined the boundaries between Parcel 49, owned by Mr. Harrigan and Parcel 17, owned by Ms. Nwokejiobi, he concluded that a wire fence exists along the eastern boundary separating the two properties. However, that fence deviates at some point, leaving a portion of Parcel 17 outside of the fenced area. The amount of that property being claimed by Mr. Harrigan amounts to 0.06 acres. Immediately

adjacent to the fence are some concrete blocks extending to a distance of approximately forty-two (42) feet.

- [21] In response to the assertions of adverse possession made by the defendants, Ms. Nwokejiobi led evidence from Ms. Aldethia Simmonds, who is also her mother. Ms. Simmonds corroborates what Ms. Nwokejiobi had to say about the root of title to the land. However, she goes on to say that she was born in 1958 and that she can remember when the land was being fenced by her father, Mr. Clive Webster. That was sometime after the year 1999 when title to the property was transferred to him. She states that the entirety of the property was not fenced and as such a portion of land remained outside of the fence adjacent to Mr. Harrigan's property. She asserts that over the years that land outside of the fence was not occupied by Mr. Harrigan; it just contained wild bush.
- [22] Ms. Simmonds states that at some point she met Mr. Harrigan who said that he wanted to negotiate or have some discussions in relation to that land. She did tell him that by that time Ms. Nwokejiobi and someone else were in charge of the land. She states that Mr. Harrigan had stated that Mr. Clive Webster had given him the land and that he had occupied it. Ms. Simmonds states that she informed Mr. Harrigan that this could not be true as the land had never been transferred to him. It was only after that conversation did she hear anything being said about the land being previously purchased from one Inez Webster for \$800.00. She states also that it was only in 2015 did she notice blocks placed on the property. She then enquired as to who placed those blocks on the land. She states that upon being informed that it was Mr. Harrigan, the family made no issue of it as they were fellow church brethren and didn't see anything wrong with it. She denies however, that the blocks were there for more than twelve (12) years.
- [23] Ms. Simmonds also denied that Mr. Fleming had placed any items on the land for over twelve (12) years. She states that sometime in 2021 she had a conversation with him regarding some "junk" he had placed on the land. In her evidence she

states that Mr. Fleming offered to purchase the land at that point. He was however informed that the land was not for sale.

- [24] The court also heard evidence from Mr. Michael Fleming, who is a process server. Ms. Nwokejiobi had engaged his services for the purpose of serving a letter on Mr. Harrigan on 21st July, 2021. At the time he had a conversation with Mr. Harrigan regarding his occupation of the land. Mr. Harrigan informed him that his son had purchased the land from one Inez Webster for \$800.00. Mr. Harrigan indicated that in order to have the matter resolved amicably he would be prepared to accept a refund of the money. Mr. Fleming indicated that he conveyed that sentiment to Ms. Nwokejiobi who rejected this offer.
- [25] In similar fashion, Mr. Fleming stated that he served a letter on Mr. Warren Fleming on 6th September, 2021. Whilst at the residence he was taken to the disputed area. Mr. Warren Fleming indicated to him that Clive Webster had allowed him to store items on the property and that he was willing to purchase what he had occupied from Ms. Nwokejiobi.
- [26] During cross examination it was put to Mr. Michael Fleming that his conversations with Mr. Harrigan and Mr. Warren Fleming were not as he had outlined in his affidavit. In relation to Mr. Michael Fleming, there was some allegation that he himself and stated that Ms. Nwokejiobi could not get the land as Mr. Warren Fleming had been in occupation for over 12 years. The witness denied those allegations. In relation to Mr. Harrigan, there was some allegation that Mr. Harrigan had been hospitalized during one of Mr. Michael Fleming's visits to him. Mr. Harrigan denies that he ever mentioned anything in relation to purchasing the land from Inez Webster. Mr. Michael Fleming however insisted that the conversations did take place in the manner he had outlined them in his affidavits.
- [27] There was also evidence led from Mr. Phillip Webster, who claims to have been born in 1966 and raised in Island Harbour as a good friend of the first defendant,

Mr. Fleming. He states in his affidavit that he frequently visited Mr. Fleming's home and assisted him in the construction of his house. Although there were some inconsistencies in his statement insofar as it relates to the construction of the house, he stated in cross examination that the construction started somewhere in 1995. At some point Mr. Fleming had migrated, prior to completing the house. He states that up until 2014 or 2015, there was a fence which ran along the boundary between Mr. Fleming's land and Parcel 17. It was Mr. Webster's evidence that Mr. Fleming had in fact built his house close to the existing fence along the boundary. The fence appeared to have been somewhat damaged during hurricane Irma.

[28] During oral testimony, Mr. Webster denied that Mr. Fleming had constructed a shed and stored other items on Parcel 17. As far as he was concerned, there was a fence there at the time and this simply did not take place. He stated that the fence had enclosed all of Parcel 17. When shown photographs of items which Mr. Fleming claims to have placed on Parcel 17, he denied witnessing any of those items being placed there during his many visits to the property over the years.

[29] Insofar as it relates to the concrete blocks allegedly placed by Mr. Harrigan, Mr. Webster states that he first noticed those blocks being placed there in 2014 or 2015. He stated that he visited the property to pick mangoes off the trees, and there was never anything on Parcel 17 in the area where the blocks are now placed, until the year 2014 or 2015. As far as he can remember, he never saw any cultivation on the area where the blocks are now located. I do note however, that at one point in the cross examination, Mr. Webster did say that he didn't know the western boundary of the property that much. That would have been the common boundary between Parcel 17 and Mr. Harrigan's property.

[30] Mr. Maikol Rivas also gave evidence. He is a Map Maintenance Officer at the Department of Lands and Surveys. He stated that aerial surveys of Anguilla are conducted periodically. The last aerial survey was conducted in 2011. On 21st July, 2021, Ms. Nwokejiobi attended the department and requested aerial images

from twelve (12) years prior to that date. The survey of 2011 was provided to Ms. Nwokejiobi, given that it was the most recent one. Mr. Rivas was able to identify the map given to Ms. Nwokejiobi during the course of the hearing. It is Ms. Nwokejiobi's case that the map shows that there were no blocks on the property at the time of the survey in 2011 as the aerial images do not show blocks along the eastern boundary of Parcel 17. Whilst counsel for the defendants have raised some dispute about the authenticity of the map, I accept on balance that it is the aerial survey as contained within the survey department which was last carried out in 2011.

The Issues

[31] As I have indicated earlier, there is no issue raised as to Ms. Nwokejiobi's title to the land. As such, her entitlement to possession rests on the court's consideration of the defendants' claims to be in undisturbed possession of the various portions of land for a period in excess of twelve (12) years. If they succeed in that defence, then Ms. Nwokejiobi's claim would fail on account of the limitation period. If the defendants are held not to be in adverse possession of the lands then Ms. Nwokejiobi would be entitled to possession and the court can therefore go on to consider whether any damages ought to be paid on account of her claim grounded in trespass.

The Law

Adverse Possession

[32] Counsel for both parties have referred to section 5 of the **Limitation Act** which states as follows:

"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 but, if the right of action first accrued to

the Crown or a spiritual or eleemosynary corporation sole through whom the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown or the corporation sole, or of 12 years from the date on which the right of action accrued , to some person other than the Crown or the corporation sole, whichever period first expires"

- [33] In addition to this, counsel for Ms. Nwokejiobi asks that the court also considers section 6 of the **Limitation Act**, which states as follows:

"Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action is deemed to have accrued on the date of the dispossession or discontinuance."

- [34] Counsel therefore argues that Ms. Nwokejiobi became the registered owner of the entirety of Parcel 17 on 25th June 2021. It is from that date she has been entitled to seek possession of the land. As such, any right of action for recovery of land would not have accrued before then. I understand this submission to mean that in interpreting section 6 of the **Limitation Act**, the period of twelve (12) years must have commenced from the date Ms. Nwokejiobi became entitled to recover possession of her land. The question of whether she has in fact been dispossessed of that land is a matter for the court to decide on the basis of the facts of the case presented. I do not agree with this submission. To my mind, if a defendant can prove that he was in actual occupation of the land for the requisite period, the fact that Ms. Nwokejiobi subsequently became proprietor of the land doesn't mean that the limitation period actually begins anew. In fact, in my view, by reason of actual occupation, Ms. Nwokejiobi would have acquired ownership of the property subject whatever overriding interests the defendants would have

had. I do however agree that this case hinges on the court's conclusion on the assertions of adverse possession made by the defendants.

- [35] Counsel for both parties also referred to section 141 of the **Registered Land Act**. The section states as follows:

“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.”

- [36] Counsel for Ms. Nwokejiobi submits that *“implicit from the wording in Section 141, is that mere occupation of a property does not automatically give you ownership of the land. The words “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” seems to suggest that an additional step must be taken by the person claiming to have ownership of the land.”* I take it that the argument here is that the defendants have not acquired ownership of the land as they had not followed the procedure outlined in section 143 of the **Registered Land Act** prior to Ms. Nwokejiobi's demand for vacant possession of her land.

- [37] However having regard to the wording of the sub-section (2), I am of the view that this submission is unsustainable. A distinction is drawn here between ownership on account of possession and the actual registration as proprietor of the land. One acquires title and proprietorship of the land upon a successful application to the Registrar. However, one's right to ownership is based solely on

having been in adverse possession of the land for a period of twelve (12) years or more. The law has long recognized a clear distinction between ownership of land, which can be grounded in equity on the one hand, and the legal title to land, which is based purely on registration as proprietor. The registration process is one where a person acquires title to, and not necessary ownership of, land. The two can at times be fundamentally different legal or equitable concepts.

[38] However, one must also draw a distinction between the defence of limitation on the basis of twelve (12) years possession and the actual claim for title to the property under the **Registered Land Act**. Here the defendants seek to use the defence of adverse possession as a shield against Ms. Nwokejiobi's exercising of her rights as proprietor. The application for title is a matter which must be dealt with by the Registrar of Lands. In either case however, the defendants' assertions regarding their actual occupation of the land are factors which have to be determined.

[39] The leading authority on the issue of what constitutes peaceable, open and uninterrupted possession is the case of **JA Pye (Oxford) Ltd. v Graham**¹ where the following was noted:

"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. "

[40] In that case, the House of Lords placed reliance on the decision of Slade J. in the case of **Powell v McFarlane**². There Slade J. sought to define what is meant by factual possession when he stated that ***"I think what must be shown as***

¹ 2002 UKHL 30

² (1977) 38 P & CR 452, Ch D

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 no one else has done so. " Insofar as it relates to the issue of intention to possess he defines this as "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 be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

Counsel for Ms. Nwokejiobi wished to place specific emphasis on the following portions of Slade J.'s decision:

"The courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."

- [41] The question therefor for consideration is whether the defendants have proven, by the evidence presented in this case that they were in factual possession of the land and that there was a clear intention to possess as owner to the exclusion of everyone else; including the proprietor of the land. Slade J. also notes that this intention had to have been made clear to the world. I turn now to consider the facts as they have been presented to me.

Court's Conclusions on Adverse Possession

- [42] Counsel for the defendants has submitted that the court should consider the location of the fence in its deliberations. It is noted that the fence was constructed

in the 1990s which left a portion of land outside of its enclosure along the boundaries of Mr. Harrigan's land. Counsel for the defendants argues that despite this, no one said anything to Mr. Harrigan until 2021. However, to my mind, the location of the fence is not a deciding factor in this case. Whilst it is true that it helps in gaining a general understanding of the facts in the case, it must be observed that one is free to place a fence anywhere on one's land. The fact that the fence was not placed along the actual western boundary does not stand to prove, in and of itself, that Mr. Harrigan had been in undisturbed possession of it for all of that time. In fact, Mr. Harrigan asserts that he has been in undisturbed possession of the land for over forty (40) years. That would have been even prior to the erection of the fence. Perhaps it may be argued that the fence itself was placed in that position because of the extent of Mr. Harrigan's occupation. The question is whether the evidence substantiates that. In my view it does not.

[43] First of all, insofar as it relates to the concrete blocks which are currently on the property, I do not accept that they have been placed there for over twelve (12) years. The aerial survey clearly shows that in 2011 those blocks were not there. Mr. Harrigan's witnesses were themselves unsure as to when the blocks were placed there and he himself had given inconsistent dates in that regard. Whilst counsel for Mr. Harrigan argues that the blocks appear to be rather old, to the extent that trees had been growing in them, I do not agree that this would prove that they have been on the land for over 12 years. I am also not of the view that simply storing blocks on someone's property necessarily amounts to the level of possession which is required by law to claim adverse possession.

[44] In addition to that, I do not accept Mr. Harrigan's evidence that he had continuously cultivated the land over the years. Again the aerial survey does not show any cultivation on the land and it appears to me to be a somewhat dry and barren property. The court visited the site and could not find actual evidence of such consistent cultivation as Mr. Harrigan has claimed. I must say that I generally did not find Mr. Harrigan to be a credible witness in this case and I do not accept his evidence that there has been the cultivation which he has claimed.

I also accept the evidence of Ms. Simmonds where she claims that over the years the land had remained primarily barren with no actual cultivation having taken place.

[45] I also considered the various conversations which had taken place with Mr. Harrigan and the alleged assertions that he had made. I accept it as being truthful that at one point he claimed that the land was purchased from Inez Webster by his son. At another point, he requested a refund of his money as well as an offer to negotiate for the purchase of the land. One cannot claim to be in adverse possession, whilst at the same time claiming to have had some other legal right to ownership the property. In his conversations with Mr. Michael Fleming and Ms. Simmonds, Mr. Harrigan also claimed at another point that Mr. Clive Webster had given him the land. I do accept that these conversations had taken place and that there is no evidence of Mr. Clive Webster transferring any property to Mr. Harrigan. These facts have led me to conclude that Mr. Harrigan is not being entirely truthful about his actual occupation of the land over the years.

[46] I also note that even in his cross examination, Mr .Harrigan seemed to have suggested that he was not even fully aware of where the boundaries actually were. He seemed to have suggested that he was of the view that the fence had in fact demarcated the common boundary and that what was left outside of the fence belonged to him. Again, when one considers the law on adverse possession, insofar as it relates to one's intention to exclude the owner, I am not of the view that a mistaken belief as to one's boundary is a ground upon which one can claim adverse possession.

[47] In any event I do not accept Mr. Harrigan's evidence as being entirely truthful in relation to his possession of this strip of land. I repeat my earlier observation of what came across to me as a rather incredible witness in Mr. Harrigan during the trial. I find on balance that the evidence presented does not prove that he has been in peaceable, uninterrupted and undisturbed possession of the land for over twelve (12) years. I would therefore reject his claim for adverse possession.

[48] In relation to Mr. Fleming, there is some dispute here in relation to the location of the fence along his common boundary with parcel 17. Ms. Nwokejiobi asserts that the fence has been removed and there appears to be some tampering with the items stored on the property since the commencement of the trial. Having examined the survey plans and visited the site myself I do agree that the fence which is along this common boundary does not appear to be as it was constructed in the 1990s. The evidence of Mr. Phillip Webster corroborates this. Mr. Webster also suggested that at the time of construction of Mr. Fleming's home in the late 1990s the fence was erect and that it demarcated the common boundary with parcel 17. Ms. Nwokejiobi herself gave similar evidence in support of her claim. She asserts that she too lived on parcel 17 for some time. I accept this as being the truth.

[49] I make the observation here that it appears to me on balance, that the fence along Mr. Fleming's side of the property may have initially been constructed along the boundary. This undermines Mr. Fleming's assertion that he had in fact occupied this property undisturbed for over thirty-seven (37) years. He built his home in the mid to late 1990s after living in Welches for a time. He also migrated for a brief period of time. His home would have been built around the same time that Mr. Clive Webster had constructed his fence.

[50] Counsel for Ms. Nwokejiobi also asks the court to consider the fact that Mr. Fleming did not become the registered proprietor of his land until 7th May, 1997. Counsel also notes that in the encumbrances section of the Land Register, the first entry refers to a charge to secure Thirty Thousand Dollars (\$30,000.00E.C) in favour of National Bank Anguilla Ltd. The date of the charge is the same date as that of the registration of the first defendant as proprietor and therefore, according to Counsel, is likely to have been the purchase price of the land. When balanced against the various surveys and subdivisions which lead to the creation of Mr. Fleming's parcel of land, it is submitted that it is unlikely that he had in fact built his home over thirty-seven (37) years ago as he has claimed. In fact, the

various subdivisions and the date of Mr. Fleming's registration as proprietor coincides with Ms. Simmonds and Mr. Phillip Webster's own evidence that he built his home in the late 1990s. This, according to counsel, gives rise to a lack of credibility in Mr. Fleming's evidence.

[51] For my part, I do not think that the mere fact of him not being the registered proprietor necessarily means that Mr. Fleming was not in possession of his own land prior to 1997. However, I do find that his evidence does not appear to me to be entirely credible in terms of his actual occupation of parts of Parcel 17. For one, I do agree that the wooden shed which was on the land during the site visit appears to be relatively new. It does not appear to me to be a shed which has been in existence on this land for over twelve (12) years. I note that Mr. Fleming did indicate that he had it repaired at one point. However, when one examines various photographs which were put into evidence, it does not appear to me that what was located on the land during the site visit had in fact been there for over twelve (12) years. On balance the items appeared to me to have been placed there after the fact. I do not find that the items observed during the site visit amount to proof of Mr. Fleming's adverse possession of the land for the period of time in which he claims.

[52] I have however considered one important fact which emerges from the evidence of Mr. Cecil Niles, who is a licensed land surveyor. Mr. Niles indicates that the southwestern corner of Mr. Fleming's house was placed exactly on the western boundary separating the two properties. I considered for a moment whether this fact may show that Mr. Fleming had in fact constructed his house this close to the boundary and did in fact use the space on Parcel 17 as his back yard. However, on balance I do not find this to be the case. Mr. Fleming in his conversation with Michael Fleming indicated that Mr. Clive Webster had given him permission to store items of the land. He said in that conversation that he was willing to purchase the land. I accept that this conversation did take place. In addition to that, I find on balance that the boundary of Parcel 17 was fenced at the time. On balance I do not agree that Mr. Fleming had in fact been in adverse

possession of this portion of Parcel 17 for the years he has claimed. Again, I state that simply storing items on land does not constitute the level of possession necessary to be entitled to prescribe a proprietor's right to their property. But these items would have nonetheless not been stored there for that period of time. I would also reject Mr. Fleming's claim for adverse possession.

Trespass

[53] It is not necessary for me to embark on any elaborate exposition on the law of trespass. It is accepted that if the property is owned by Ms. Nwokejiobi. It stands to reason therefore, that if the defendants, having failed to satisfy the court of the assertions of adverse possession, then Ms. Nwokejiobi would be entitled to possession of her land and the continued use of her land to store items belonging to the defendants amount to trespass. She is therefore entitled to an order for the items to be removed and an injunction prohibiting any further trespass to her land.

Damages

[54] No evidence had been placed before the court regarding Ms. Nwokejiobi's claim for damages. According to Ms. Simmonds, the family was aware that Mr. Harrigan had placed concrete blocks on the premises in 2015 but thought nothing of it given his relationship to the family and their connections through the church. Ms. Nwokejiobi herself did not become the proprietor of the land until July 2021. To my mind, nothing was presented to the court to show an actual financial loss as a result of the storage of the blocks.

[55] A similar situation arises in relation to Mr. Fleming's occupation. No evidence of an actual loss was presented. I considered for a moment the question of nominal

damages but I am not of the view that this is a case which necessitates an order for damages in those circumstances.

[56] In conclusion therefore I make the following declarations and orders:

- (a) That the defendants have not been in quiet, peaceable and undisturbed possession of any portion of Parcel 17 for over twelve (12) years. Reliance on section 5 of the **Limitation Act** is therefore rejected.
- (b) The claimant is entitled to possession of that parcel of land situated at Island Harbour, Anguilla and Registered in the Land Registry of Anguilla in Section East Central as Block 89218 B Parcel 17 in its entirety.
- (c) The defendants are each to remove the items stored on Parcel 17 within 14 days from the date of this order.
- (d) Save for the purpose of carrying into effect the orders made herein, the defendants are prohibited whether by themselves or their agents from any further trespass to Parcel 17.
- (e) Each defendant will pay to Ms. Nwokejiobi prescribed costs on the default value of \$50,000.00EC amounting to \$7,500.00EC each.

Ermin Moise
High Court Judge

By the Court

Registrar