

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2020/0274

BETWEEN:

AUGUSTUS LAURENCIN

Claimant

and

EUNICE ROSEMOND

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances: Mrs. Andra Gokool-Foster of Counsel for the Claimant

2022: April 29;
May 12; (further submissions)
June 2.

JUDGMENT

Background

[1] **CENAC-PHULGENCE J:** The claimant, Augustus Laurencin (“Mr. Laurencin”), filed a fixed date claim form on 3rd July 2020 for several orders against the defendant, Ms. Eunice Rosemond (“Ms. Rosemond”). Concisely put, Mr. Laurencin seeks orders to the following effect:

- (i) that the grant of title by prescription to Ms. Rosemond by Order of the High Court dated 26th November, 2009 (“the 2009 Order”) be set aside on the ground that it was irregularly issued in accordance with the **Supreme Court Prescription by Thirty Years (Declaration of Title) Rules**¹ (“the

¹ S.I. No. 7 of 1970, Cap 2.01, Revised Laws of Saint Lucia.

Rules”), which had been impliedly repealed by sections 94, 95 and 96 of the **Land Registration Act**² (“the Act”), and in violation of the said sections of the Act;

- (ii) that the Registrar of Lands (“the Registrar”) proceed to hear and determine an application for grant of title by prescription to be made by Ms. Rosemond in relation to the parcel of land registered in the Land Registry as Block 1046C Parcel 39 (“the Parcel”) in accordance with sections 94, 95 and 96 of the Act;
- (iii) declaring that by virtue of a Deed of Partition registered in the Land Registry on 24th July, 2002 as Instrument No. 3364/2002, Mr. Laurencin became the sole and absolute registered owner of the Parcel; ordering that the Registrar rectify the Land Register for the Parcel so that Mr. Laurencin is registered as sole and absolute proprietor thereof; and cancelling from the Land Register for the Parcel the declaration of title made pursuant to the 2009 Order, registered in the Land Registry as Instrument No. 1283/2010;
- (iv) alternatively, an order that the Registrar rectify the Land Register for the Parcel by removing Ms. Rosemond’s name as sole and absolute proprietor pending the hearing and determination of the application to be made by her for the grant of title by prescription;
- (v) declaring that the grant of title by prescription made by the 2009 Order was obtained by fraud or mistake perpetuated upon the High Court by virtue of perjured information contained in Ms. Rosemond’s Petition;
- (vi) general damages for loss of use of the Parcel;
- (vii) interest; and
- (viii) costs.

[2] In his statement of claim, Mr. Laurencin states that he obtained a grant of Letters of Administration in the Estate of Mary Gertrude Edward issued by the High Court on 27th May, 2002 and registered in the Registry of Deeds and Mortgages on 5th June, 2002. Thereafter, by a Deed of Partition bearing Instrument No. 3364/2002 registered in the Land Registry on 19th August, 2002, he became the

² Cap 5.01 of the Revised Laws of Saint Lucia.

sole and absolute proprietor of the Parcel, his registration on the Land Register for the Parcel being notice thereof to the whole world.

[3] Mr. Laurencin states, however, that upon a search, he discovered that a without notice Petition had been made by Ms. Rosemond to the High Court in Claim No.: SLUHCV2008/0832 and the 2009 Order was made granting her title by prescription in respect of the Parcel. Ms. Rosemond, thereafter, registered the Order granting her title in the Land Registry as Instrument No. 1283/2010.

[4] Mr. Laurencin avers that Ms. Rosemond, in her without notice Petition, stated that no other person claimed to be the owner of the Parcel. He avers that her representations are false and seek to defeat section 30 of the Act, which deems all persons as having notice of entries on the Land Register. This, Mr. Laurencin says, is clear evidence of fraud and malice on Ms. Rosemond's part, and therefore the grant of title by prescription cannot stand in the face of statutory notice of his proprietorship of the Parcel on the Land Register. According to him, the declaration of title in favour of Ms. Rosemond is therefore null, void and of no effect and must be set aside.

[5] Mr. Laurencin sets out particulars of fraud by Ms. Rosemond as follows—

- i. in spite of section 30 of the Act, she falsely swore on oath that there was no registered owner of the Parcel;
- ii. in spite of section 30 of the Act, she falsely represented to the High Court that there was no Land Register in the Land Registry showing him to be the sole and absolute proprietor of the Parcel;
- iii. in spite of section 30 of the Act, she falsely presented herself as being in actual occupation of the Parcel when he was in actual occupation;
- iv. in spite of section 30 of the Act, she falsely swore on oath that she had prescribed his ownership of the Parcel by 30 years uninterrupted occupation;
- v. in spite of section 30 of the Act, she failed to afford him the benefit of the principles of natural justice.

- [6] Further, Mr. Laurencin contends that the Court of Appeal, in the case **Ferdinand James v Planviron Caribbean (Practice) Limited et al**,³ settled the matter that the Registrar is the only person authorized in law to issue a grant of title by prescription, as sections 94-96 of the Act had the effect of impliedly repealing the Rules, which had previously given jurisdiction to the High Court to grant title by prescription. Thus, he says the grant of title by prescription made by the 2009 Order must be set aside as the High Court had no jurisdiction to so order.
- [7] In any event, he says, assuming but not conceding prescription by Ms. Rosemond, the registration of the Deed of Partition and his registration on the Land Register as sole and absolute proprietor in 2002 constituted interruption of prescription as established by case law. Additionally, he avers that section 30 of the Act and the ruling in the **Ferdinand James** case that the principles of natural justice avail a registered proprietor operate to render the grant of title by prescription made by the 2009 Order null and void.
- [8] Finally, Mr. Laurencin states that as the Land Register for the Parcel currently reflects Ms. Rosemond as the sole and absolute proprietor thereof, he fears that her unlawful trespass of the Parcel will continue indefinitely and unless the Land Register is rectified, he will continue to be deprived of his rights as proprietor to be registered and to enjoy the use and benefit of the Parcel as such.

Procedural History

- [9] On 16th October, 2020, Mr. Laurencin filed a notice of application and affidavit in support for an order for an alternative method of service. By order of the Court dated 19th October, 2020, Mr. Laurencin was granted leave to serve the fixed date claim form with accompanying statement of claim in support, all ancillary

³ SLUHCVP2017/0050, delivered 16th October 2019, unreported.

applications and all other documents within the action on Ms. Rosemond by advertisement in two (2) consecutive issues of a weekend newspaper circulating in Saint Lucia. An affidavit of service was filed by a Melva Joseph, Legal Secretary in the chambers of Andra Gokool-Foster, Mr. Laurencin's attorney, swearing that on 14th November, 2020 and 21st November, 2020, she caused notice of the proceedings, being the fixed date claim form and statement of claim to be published in the two said weekend issues of The Voice Newspaper, copies of which were exhibited to her affidavit. To date the claim has not been answered by Ms. Rosemond. The claim is therefore being considered in her absence. Pursuant to the Court's case management order dated 31st January, 2022, notice of the trial date and all the documents filed pursuant to the said order was given by advertisement in two weekend issues of the Voice Newspaper dated 16th April, and 23rd April, 2022 as evidenced by affidavit of service of Melva Joseph filed on 27th April, 2022.

Issues

- [10] The claim raises the following issues for determination:
- 1) Whether this court, being a court of coordinate jurisdiction, can set aside the 2009 Order?
 - 2) Whether the Order ought to be set aside on the ground of being obtained by fraud or mistake?
 - 3) Whether the judgment in the **Ferdinand James** case is retroactive in effect and therefore entitles Mr. Laurencin to bring a new claim for the relief sought to be decided in accordance with the ruling in the **Ferdinand James** case?
 - 4) Whether registration interrupts prescription?
 - 5) Whether section 30 of the Act precludes prescription?

Discussion

Issue 1-Whether this court, being a court of coordinate jurisdiction, can set aside the 2009 Order?

[11] The main thrust of Mr. Laurencin's case is that there was an irregularity in the grant of title by prescription by the High Court in that it was made pursuant to The Supreme Court Prescription By Thirty Years (Declaration of Title) Rules which was impliedly repealed by sections 94-96 of the LRA and therefore the 2009 Order should be set aside.

[12] The locus classicus on this question is the Privy Council case of **Leymon Strachan v The Gleaner Company Limited and Dudley Stokes**.⁴In that case, the plaintiff had appealed against the judgment of the Court of Appeal dismissing his appeal from the refusal of Smith J to set aside an earlier order of Walker J as being made without jurisdiction. There were therefore two jurisdiction-related questions for consideration – whether Walker J had jurisdiction to make the order he made and whether, if he did not, Smith J had the jurisdiction to set it aside, given that Smith J was a judge of concurrent jurisdiction. In relation to the latter – whether the order of Walker J could have been set aside by a judge of concurrent jurisdiction, the Board held:

“25. The distinction between orders which are often (though in their Lordships' view somewhat inaccurately) described as nullities and those which are merely irregular is usually made to distinguish between those defects in procedure which the parties can waive and which the Court has a discretion to correct and those defects which the parties cannot waive, and which give rise to proceedings which the defendant is entitled to have set aside *ex debito justitiae*...

...

27. In the present case... the only question is whether an order of a judge of the Supreme Court made without jurisdiction is a nullity, not in the sense that the party affected by it is entitled to have it set aside as a matter of right and not of discretion (of course he is) nor in the sense that the excess of jurisdiction can be waived (of course it cannot) but in the

⁴[2005] UKPC 33.

sense that it has no more effect than if it had been made by a traffic warden and can be set aside by a judge of co-ordinate jurisdiction.

28. An order made by a judge without jurisdiction is obviously vulnerable, but it is not wholly without effect; it must be obeyed unless and until it is set aside and (as will appear) it provides a sufficient basis for the Court of Appeal to set it aside...

...

32. The Supreme Court of Jamaica, like the High Court in England, is a superior court, or court of unlimited jurisdiction, that is to say, it has jurisdiction to determine the limits of its own jurisdiction. **From time to time a judge of the Supreme Court will make an error as to the extent of his jurisdiction.** Occasionally (as in the present case) his jurisdiction will have been challenged and he will have decided after argument that he has jurisdiction; **more often (as in the Padstow case) he will have exceeded his jurisdiction inadvertently, its absence having passed unnoticed. But whenever a judge makes an order, he must be taken implicitly to have decided that he has jurisdiction to make it. If he is wrong, he makes an error whether of law or fact which can be corrected by the Court of Appeal. But he does not exceed his jurisdiction by making the error; no[r] does a judge of co-ordinate jurisdiction have power to correct it.**

33. In the present case Walker J held that he had jurisdiction to make the order he did. **If wrong, his decision could be reversed by the Court of Appeal which would be bound without going into the merits to set aside his substantive order as a nullity. As between the parties, however, and unless and until reversed by the Court of Appeal, his decision (both as to jurisdiction and on the merits) was res judicata. As a judge of co-ordinate jurisdiction Smith J had no power to set it aside."** (my emphasis)

- [13] Thus, it is the law that where an order of a judge of the High Court is challenged on the basis of lack of jurisdiction, such an order cannot be set aside by another judge of coordinate jurisdiction. One of Mr. Laurencin's challenges to the 2009 Order is lack of jurisdiction, to the extent that he avers that (i) the Act had the effect of impliedly repealing the Rules which had previously given jurisdiction to the High Court to grant title by prescription; and (ii) pursuant to the Act, the Registrar is the only person authorized in law to issue a grant of title by prescription.

- [14] As confirmed by the Board in **Leymon Strachan**, the question of jurisdiction is one of law or fact and is substantive, as opposed to merely procedural, such that any challenge to its correctness must be determined by the Court of Appeal. Until such determination is made on appeal, the High Court is functus in the matter and the decision is res judicata. Therefore, it was incumbent on Mr. Laurencin to have appealed the 2009 Order granting title by prescription to Ms. Rosemond. However, having not done so, this court is not in a position to set aside the 2009 Order, regardless of any error of law or fact contained therein.
- [15] Mr. Laurencin relies heavily on the case of **Ferdinand James** as supporting his view that this Court has jurisdiction to set aside the 2009 Order. Counsel for Mr. Laurencin in the further submissions filed on 12th May, 2022, posited that ‘...there is not a sprinkling of evidence that the Court of Appeal questioned the jurisdiction of His Lordship Smith J but by and large went the full length, breadth, depth and height of the jurisdictional issue by upholding it.’ Counsel further submitted that if the Court of Appeal did not overturn the jurisdictional exercise it cannot be assumed that Smith J had no jurisdiction to set aside the order of Belle J retroactively. I therefore believe it is important to analyse the **Ferdinand James** case.
- [16] I will start with the High Court case.⁵The application dealt with by Smith J was an application for summary judgment filed by the defendant raising the issue of whether the LRA enacted in 1984 impliedly repealed the Rules. By way of background and to put things in context, on 31st January, 2011, the High Court made an order granting title by prescription to Ferdinand James. At the time, Planviron was recorded on the land register as the registered proprietor. On 19th May, 2011, Planviron filed an application to set aside the January 2011 order on

⁵ SLUHCV2009/0766, delivered 10th November 2017, unreported.

the basis inter alia that the proceedings were not instituted in accordance with the LRA, which impliedly repealed the Rules. By consent of the parties, the set aside application was overtaken by the application for summary judgment which is the application which was decided by the High Court.

[17] The judge concluded that Ferdinand James had no prospect of successfully defending the application to set aside the order granting the declaration of title by prescription filed by Planviron since the Rules pursuant to which the order had been made had been impliedly repealed by the LRA. The judge granted the summary judgment application filed by Planviron and ordered that the January 2011 order be set aside.

[18] Ferdinand James appealed and on appeal, the issue was whether the Rules had been impliedly repealed by the LRA. The issue of whether the High Court had jurisdiction to make an order setting aside the January 2011 order was not addressed squarely by the Court of Appeal. In fact, Pereira CJ remarked that the set aside application was not determined on its merits. The Court of Appeal by a majority dismissed the appeal against Smith J's determination that Part 9 of the LRA impliedly repealed article 2103 of the Civil Code and/or the Prescription Rules. However, notably the learned Chief Justice, remarked at paragraph 5 of the judgment:

“Mr. James relies on three main grounds of appeal. **Notably, neither Mr. James nor Planviron took issue, here or in the court below, with the propriety of the learned judge's orders as a judge of coordinate jurisdiction.** The issue presented in this appeal, rather, is encapsulated in the singular question – whether the learned judge was correct in holding that part 9 of the LRA impliedly repealed the Prescription Rules.” (my emphasis)

[19] This issue of Smith J's jurisdiction was not considered by the Court of Appeal as it was not raised by the parties. However, I do not take it to mean that the Court of Appeal was, by dismissing the appeal, affirming that a judge can properly set aside an order of another judge of coordinate jurisdiction. The fact that the

learned Chief Justice alluded to there being a question as to the propriety thereof (admittedly not raised or considered), lends support to this position.

Issue 2-Whether the 2009 Order ought to be set aside on the ground of being obtained by fraud?

- [20] The other basis on which Mr. Laurencin asks the Court to set aside the 2009 Order is that it was obtained by fraud because Ms. Rosemond, in her petition, stated that there was no registered owner of the Parcel; that there was no Land Register in the Land Registry showing him to be the proprietor of the Parcel; presented herself as being in actual occupation of the Parcel when he was in actual occupation of the Parcel; stated that she had prescribed ownership of the Parcel by 30 years uninterrupted occupation; and failed to afford him the benefit of the principles of natural justice.
- [21] Section 98 of the LRA makes provision for the court to order rectification of the land register to cancel or amend any registration where it is satisfied that any registration has been obtained by fraud or mistake. I make two observations. Firstly, there are no allegations of mistake in the registration process and secondly, it is very clear that the allegations of fraud articulated by Mr. Laurencin have nothing to do with the registration process but are allegations of fraud relating to what was put in evidence before the High Court on Ms. Rosemond's petition for prescriptive title. It therefore appears to me that section 98 of the LRA is not engaged.
- [22] The recent UK Supreme Court case of **Takhar v Gracefield Developments and others**⁶ establishes that a party to a previous action in which judgment was given can bring a new action to have the judgment in the previous action set aside on the basis that it had been obtained by fraud. Acknowledging that this area of the law required clarification, and after examining numerous cases from the UK, Canada and Australia on the subject matter, their Lordships agreed and

⁶[2019] UKSC 13.

affirmed that, where fraud had not been raised in the previous action, bringing the new action did not require the party doing so to demonstrate that the fraud could not have been uncovered with reasonable diligence in advance of obtaining the judgment. Further, their Lordships agreed that ‘fraud unravels all’, such that once fraud is proved, it vitiates judgments, contracts and all transactions whatsoever, and the innocent party was entitled to have the judgment set aside as of right without reference to the merits.

[23] At paragraph 56 of his judgment, Lord Kerr reaffirmed the requirements that must be satisfied for a judgment to be set aside for fraud:

“At para 26 of his judgment, Newey J said that the principles which govern applications to set aside judgments for fraud had been summarized by Aikens LJ in **Royal Bank of Scotland plc v Highland Financial Partners LP** [2013] 1 CLC 596, para 106. There, Aikens LJ said:

“The principles are, briefly: first, there has to be a ‘conscious and deliberate dishonesty’ in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be ‘material’. ‘Material’ means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court’s decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus, the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence.””

[24] This case is somewhat unique in the sense that Mr. Laurencin was never a party to Ms. Rosemond’s petition in Claim No.: SLUHCV2008/0832, which was made without notice. This is not, however, material. It simply means that whatever evidence Mr. Laurencin adduces in this claim in an attempt to establish that the

judgment was obtained by fraud, falls to be assessed in accordance with the requirements set out above. Further, it is well known and incontrovertible that allegations of fraud must be specifically pleaded and proven.⁷Based on the allegations of fraud pleaded by him, it is difficult to see how Mr. Laurencin can successfully prove that the judgment was obtained by fraud. I must also point out that despite the fact that the allegations of fraud are based on statements made by Ms. Rosemond in her Petition to the Court in 2008, that petition was not put before this Court.

[25] No information has been provided in the pleadings to suggest that statements made by Ms. Rosemond that – (i) there was no registered owner of the Parcel;(ii) there was no Land Register showing Mr. Laurencin as registered proprietor;(iii) she was in actual occupation of the land; and (iv) she had prescribed it by 30 years uninterrupted occupation – were conscious and deliberate dishonest statements made by her. As Mr. Laurencin points out, section 30 of the Act (on which all the particulars of fraud pleaded by him are grounded) ‘deems’ notice to the world of the proprietorship of any person whose name is recorded as such on the Land Register. It does not constitute actual notice or knowledge, such that her statements to the contrary are deliberately dishonest. ‘Deemed statutory notice’ is not sufficient to impute fraud on Ms. Rosemond’s part.

[26] It is also doubtful that these statements, in particular, that (i) there was no registered owner of the Parcel and (ii) no Land Register showing Mr. Laurencin as registered proprietor, was material to the decision to grant her title, in the sense that they were an operative cause of the decision to grant her title or would have entirely changed the way in which the court approached and came to its decision. It must be assumed that the Court would not have relied materially on these two assertions without more, as they are contrary to the scheme of land

⁷The Castries Constituency Council v Lambert Nelson, SLUHCVP2014/0016, delivered 4th February 2016, unreported.

law in Saint Lucia – the title by registration system⁸, in which (i) every parcel of land in Saint Lucia is registered, whether in the name of a private person or the Crown; and (ii) that there is, at the Land Registry, a Land Register corresponding to every parcel of land in Saint Lucia.⁹The court must have been seized of the fact that the Parcel had some owner, even if that be the Crown.

[27] Further, in the absence of evidence to the contrary, it must also be assumed that the court would not have granted title by prescription without having in evidence the Land Register for the Parcel, which is a matter of public record. It is therefore unlikely that these statements were the operative cause of title being granted to Ms. Rosemond. Thus, it is difficult to see how new evidence of the Land Register, showing Mr. Laurencin as registered proprietor at the time of Claim No.: SLUHCV2008/0832, would have impacted substantially Ms. Rosemond's evidence that supported the grant of title to her.

[28] In relation to her statements that she was in 30 years' uninterrupted actual occupation, no indication of what her evidence was in this regard has been provided, although, whether dishonest or not, it would have been likely to have been an operative cause of title being granted to her. It is important to note, however, that what will satisfy the criteria for grant of title by prescription will vary, to some degree, on a case-by-case basis. 'Title' is relative, and the question of title is really a question of who has better title to or interest in land. This is especially the case when dealing with prescription, as title by prescription presupposes that the person so claiming is not the true owner of the land and that there is some 'paper title owner' against whom prescription has run. Therefore, it is not necessarily the case that Ms. Rosemond was deliberately untruthful regarding the extent and degree of her occupation. Nonetheless, it is

⁸ Privy Council in the case *Richardson Anthony Arthur v The Attorney General of Turks and Caicos Islands* [2012] UKPC 30.

⁹ See *Pereira CJ in Joseph v Francois* SLUHCVAP2011/0025 consolidated with SLUHCVAP2012/0037, delivered 15th April 2015 with written reasons delivered 21st August 2015. at paragraph 25 and in *Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited*, SLUHCVAP2017/0050, delivered 16th October 2019, unreported. At paragraph 9 and 25.

possible that new evidence brought by Mr. Laurencin as to his actual occupation and refuting the evidence of Ms. Rosemond as to hers, is material when assessed against the evidence presented by her resulting in the grant of title to her.

- [29] The particular of fraud wherein Mr. Laurencin alleges that Ms. Rosemond denied him the benefit of the principles of natural justice is a mystery. If he means simply that by stating that there was no owner or land register for the Parcel, he was denied the benefit of being heard, this is not of itself a particular of fraud, but more a consequence, and the same observations mentioned above would apply. That may properly be a matter for an appeal court but not a ground for set aside of an order by a court of concurrent jurisdiction.

Issue 3-Whether the judgment in the Ferdinand James case is retroactive in effect and therefore entitles Mr. Laurencin to bring a new claim for the relief sought to be decided in accordance with the ruling in the Ferdinand James case?

- [30] Mr. Laurencin relies solely on the court of appeal decision in **Ferdinand James** and the fact that that court did not interfere with Smith J's set aside of the 2011 Order as authority for the proposition that the decision operates retroactively.
- [31] The learned Chief Justice at paragraph 48 of **Ferdinand James** in relation to the ground of appeal that the High Court judge did not take into account the consequence of his decision on previous declarations of title by prescription made by the High Court quoted the learned trial judge at paragraph 29 of his judgment where he stated:

“... it might be said that a finding now of implied repeal would introduce uncertainty and disruption of a functioning system. Be that as it may, when it comes down to the forensic crunch, the Court must give effect to the clear and unambiguous will of a sovereign parliament that jurisdiction to decide prescriptive title to land in Saint Lucia vests in the Registrar. The legal challenge to the Rules having finally come, it cannot be ignored.”

[32] The Chief Justice remarked that she knew of no legal principle which allowed the court to ignore the law when an issue arises for determination because persons have chosen to so ignore it for several years. The Chief Justice having made these remarks then said:

“... I express no view as to the merits or demerits of any prior claims in respect of which declarations of title have been made subsequent to the coming into effect of the LRA or for that matter, any decisions taken by the registrar with reference to the same. It is however the function of the Court to decide what the law is on an issue raised before it.”

[33] Based on the above discussion in **Ferdinand James**, it is my view that the question whether in fact the Court of Appeal decision affects the previous declarations of title granted by the High Court was not pronounced on by the Court of Appeal and remains undecided.

[34] I have not been able to find many authorities on this point relevant to this jurisdiction, although this question is the subject of significant debate in the United States and an area of concern within the European Court of Human Rights and there are many different schools of thought.

[35] Nonetheless, the question of retroactivity of judicial authorities was considered in the UK case of **Shanker v General Medical Council**.¹⁰ Dr. Shanker, over the years from November 2001, made a number of appearances before the Fitness to Practise Panel of the General Medical Council resulting in a series of suspensions for various periods. Upon his appearance before the Panel on 30th January, 2008, which was adjourned to June 2009, the Panel concluded that his fitness to practise was impaired, and by virtue of both misconduct and deficient professional performance, a decision was made to erase him from the register. Dr. Shanker was informed of this, and of the need to exercise his right of appeal within 28 days.

¹⁰[2015] EWHC 2421 (Admin).

- [36] Dr. Shanker lodged an appeal notice out of time on 24th August, 2009, having previously issued judicial review proceedings. The Administrative Court office closed the file as an ineffective application because it was out of time. Subsequent applications for judicial review were also refused as well as permission for the judicial review proceedings to be amended and converted into a statutory appeal. In so refusing, the judge reasoned that little had been done, the papers were in a mess, there was an obligation to get on with the matter that has not been complied with, and the grounds did not appear to have any obvious real merit or even arguability. Although the judge recognized that Dr. Shanker's erasure would not be considered by the court, he did not regard it as justifying an amendment to be made at that stage in the light of the prolonged suspension and the assessment of his poor conduct over the years. The judge expressed that it was the time at which the proceedings should be brought to an end.
- [37] On 17th December, 2014, Dr. Shanker issued an application notice in the present proceedings which, with the agreement of the parties, was treated as an application to appeal out of time against the decision of the Panel of 23rd June, 2009. Dr. Shanker invited the court to consider the decision of the Court of Appeal in Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818 on the question of the application of the time limit. In *Adesina*, the Court decided that article 6 was violated by an absolute and strict application of time limits in cases for submission of appeals, concluding that there was an "extremely narrow" exception to the time limit which arose in "exceptional circumstances" where an appellant had done all he could to bring an appeal in a timely fashion. Dr. Shanker sought to persuade the court that *Adesina* applied retrospectively, that the threshold of exceptionality was crossed, and that there would be a substantial injustice if he was not allowed to proceed.
- [38] Justice Sycamore held that Dr. Shanker's application must fail. He held that the general position is that the retrospective effect of a judicial decision is excluded from cases that have been finally decided and that there was nothing in *Adesina*

to suggest that it was intended to apply retrospectively to cases of this nature. In so concluding, he referred to the decision of the Supreme Court in the Scottish case of **Cadder v HM Advocate** [2010] UKSC43 and noted the judgment of Lord Hope where he concluded that the re-opening of closed appeals is not permitted, although he suggested that the position would be different where there is an ongoing challenge or an appeal which was not closed. On the strength of this authority, I conclude that the decision in **Ferdinand James** does not have retrospective effect. Even if I am wrong on the retrospectivity of **Ferdinand James**, I am still of the view that this Court of concurrent jurisdiction would not be able to set aside the 2009 Order as sought by Mr. Laurencin.

Issue 4-Whether registration interrupts prescription?

- [39] This issue is moot given the outcome of issues 1-3 above. In any event, articles 2083 to 2092 of the **Civil Code** set out the causes which interrupt prescription. None of these articles speak to registration interrupting prescription and Mr. Laurencin has not indicated any authority for his position. He refers to there being case law to this effect; however, I am unaware of any. What the cases do establish is that first registration of land under the LRTP interrupts prescription. This was affirmed by the Privy Council in the case of **Louisien v Jacob**¹¹ and the Court of Appeal in the case of **Moses Joseph et al v Alicia Francois; St. Torrence Mattyet al v Alicia Francois**.¹² In **Saint Lucia National Housing Corporation v Francis Chitolie et al**¹³ at paragraph 165, the rationale for first registration interrupting prescription but not any subsequent registration was explained thus:

“The LRTP in Saint Lucia was an all-encompassing procedure requiring all persons who had interest in land whether based on long possession or other documentary title to make their claim and the land adjudication officer had the power to award their interest. This is the reason that in Saint Lucia first registration, or rather the judicial process under the LRA

¹¹[2009] UKPC 3.

¹²SLUHCV2011/0025; SLUHCV2012/0037 at paras 26-27.

¹³ Claim No.: SLUHCV2009/0263.

and LAA during the LRTP which culminated in first registration interrupts prescription.”

- [40] First registration is considered akin to a judicial demand, which is a cause that interrupts prescription under article 2085 of the **Civil Code**, because of the adjudicative process which was a characteristic of the LRTP and culminated in first registration. This principle was upheld by the Court of Appeal on appeal and remains good law.

Issue 5-Whether section 30 of the Act precludes prescription?

- [41] Section 30 of the Act provides as follows:

“30. Entries to constitute actual notice

Every proprietor acquiring any land, lease or hypothec shall be deemed to have had notice of every entry in the register relating to the land, lease or hypothec.”

- [42] As mentioned above, this argument is illogical because title by prescription necessarily presupposes that the person claiming title by prescription is not the true owner of the land and that there is some ‘paper title owner’ against whom he or she is prescribing, by dispossessing that paper title owner and exerting his or her own better possession. Thus, notice of the actual registered proprietor, whether actual or deemed by section 30 of the Act, does not preclude prescription. If the two were inconsistent, having made the provision contained in section 30 of the Act, provision would not also have been made for prescription in Part 9, sections 94-96 of the Act.

Conclusion

- [43] The claim must fail on issues 1 (the question of the power to set aside the order of a judge of coordinate jurisdiction) and 3 (the question of whether the **Ferdinand James** judgment is retroactive in effect). It also fails on issue 2 (fraud) as based on the pleadings Mr. Laurencin has not made out fraud.

The other issues are then moot points and, in any event, would not be resolved in his favour.

Order

[44] Based on the foregoing discussion, the claim is dismissed with no order as to costs.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar