

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2011/0808

IN THE MATTER of the Land Registration Act
Sections 94 and 95 of the Land Registration Act
No. 12 of 1984

and

IN THE MATTER of the prescription by thirty year
(declaration of title) Saint Lucia Rules No. 7 of
1970

BETWEEN:

DAVID PHILLIP

Applicant

and

ESTHER STEPHEN

Respondent

**Consolidated with:
SLUHCV2012/0213**

BETWEEN:

**JOSEPH PHILLIP
(Qua Administrator of the Estate of
Celina Philip also known as Celina Montoute)**

Applicant

and

**DAVID PHILLIP
also known as KENT LONGVILLE**

Respondent

BEFORE:

The Hon. Mde. Justice Rosalyn Wilkinson

High Court Judge

APPEARANCES:

Mr. Horace Fraser of Counsel for Mr. David Phillip
Mr. George Charlemange of Counsel for Mr. Joseph Phillip
Mr. Alvin St. Clair of Counsel for Ms. Esther Stephen

2015: May 11th.
2016: January 25th.
2019: October 9th
2021: October 1st & 29th
2022: January 18th, 19th & 21st

JUDGMENT

- [1] **Wilkinson J.** (Ag): These consolidated suits involve a dispute over land described on first registration at 20th October 1986, as Block 1256C Parcel 67 and situate in the Quarter of Gros Islet (the Property). The location of the Property is at the corner of Marie Therese and Church Streets, Gros Islet. The proprietor on first registration was described as 'Heirs of Celina Phillip'. Entries on the register thereafter were that at 28th August 1989, the proprietor was Willie Volney as Executor of the Estate of Celina Phillip, at 13th March 1995, a caution was put on the Property by Mr. David Phillip, and on 2nd February 2007, the proprietor was Joseph Phillip as Administrator of the estate of Celina Phillip.
- [2] When the matter came on for continuation of the trial on 18th January 2022, Mr. David Phillip withdrew his claim **SLUHCV2011/0808**, as with the passage of time the law had changed on whether he could rightly file his suit for prescription by thirty years (declaration of title) before the Court¹. Then Counsel for Mr. Joseph Phillip informed the Court that Mr. Phillip was now *non compos mentis* and had been so

¹ SLUHCVAP2017/0050 Ferdinand James v. [1] Planviron (Caribbean Practice) Limited [2] Rodney Bay Marina Limited.

for approximately 2 years. Counsel for the Parties then informed the Court that the Parties closed their case.

- [3] At the time that the Parties closed their case, the evidence before the Court was that of Ms. Florence Phillip, the sister of Mr. Joseph Phillip, who gave evidence on his behalf, Mr. David Phillip and Mr. Phillip Jules who gave evidence on behalf of Mr. David Phillip.
- [4] During closing submissions, Counsel for Mr. David Phillip drew to the Court's attention that Mr. Joseph Phillip had failed to file a defence to the counterclaim. The Court observes that the nature of the suit is not one which permits the entry of default judgment².
- [5] Mr. Joseph Phillip's suit sought by way of relief: (i) a declaration that he was the registered owner of the Property and was entitled to possession of the Property; (ii) possession of the Property, (iii) mesne profits to be assessed, (iv) an order that Mr. David Phillip vacate the Property forthwith; (v) an injunction restraining Mr. David Phillip from collecting any rent or rents with regard to the Property, (vi) an order that Mr. David Phillip disclose all rent or rents that he has received from the Property and remits the same to Mr. Joseph Phillip; (vii) an order that Mr. David Phillip take down and remove from the Property any chattel or chattel house that he has constructed thereon; and (viii) any other order as to the Court seems just in the circumstances.
- [6] Mr. David Phillip filed a defence and counterclaim. By his counterclaim he sought the following orders: (i) a declaration that Mr. Joseph Phillip's claim has been prescribed, (ii) a declaration that his right of occupation of the Property is an overriding interest within the meaning section 28(g) of the LRA; (iii) a declaration that Mr. Joseph Phillip acquired title to Block 1256C Parcel 67 by mistake, and (iv) costs.

² CPR 2000 rule 18.12(5).

[7] The Court finds it helpful to cite the certain paragraphs of the defence and counterclaim of Mr. David Phillip. He pleads:

“8. At all material times the Defendant who was born on the 1st March 1963 in Saint Lucia of the bodies of Harold Longville and Cecilia Philip assumed occupation (of) the said land together with his father in 1986 and remained in continuous occupation ever since.

9. The Defendant contends that his family’s occupation of the said land has been continuous, uninterrupted and peaceable as owners for seventy-two (72) years prior to the Land Registration and Titling Project (LRTP) and for a further twenty (20) years after the Land Registration and Titling Project before his right of occupation was challenged by the Claimant.

10. The Defendant’s claim of **prescription of title to the Land** is by virtue of his predecessors’ continuous, undisturbed and peaceable exclusive **occupation as owners thereof for over thirty year (30) years in accordance with Article 2057 of the Civil Code** of Saint Lucia 1957 of the revised Laws.

11. The Defendant contends that the **Claimant’s claim has been prescribed** and his occupation of the land is an overriding interest protected by Section 28(g) of the Land Registration Act.

12.

13. The Defendant contends that the Claimant obtained title to the said land by mistake and or fraud.”(My emphasis)

[8] At the hearing, Counsel for Mr. David Phillip indicated that he was no longer pursuing the allegation of fraud.

[9] At this juncture, the Court observes that the mandatory requirement on a pleading of mistake that particulars be provided has not been complied with. This is a matter of trite law.

The Evidence

[10] Ms. Florence Phillip, who was 90 years at the time that she gave evidence, identified the land in issue by its Block and Parcel number as well as its location address. She resided for a period at England until the 1980s, when she returned to Saint Lucia. She knew that Mr. Harold Longville lived in an old little wooden house on the land

and she knew that he died in or about 1991. She did not know Mr. Longville to have anyone else residing in the house with him and said that it was following Mr. Longville's death that Mr. David Phillip went into the house previously occupied by Mr. Harold Longville and thereafter refused to leave. She observed that Mr. David Phillip broke down the house previously occupied by Mr. Harold Longville and another small wooden building which was used as a kitchen and started building a concrete and plywood bar on the Property.

- [11] Mr. David Phillip said that he was the grandson of Ms. Luciana Longville who was born in 1927, on the Property and resided there until her death in 1987, at age 72 years. He was the son of Mr. Harold Longville, who was born on the Property and resided there until his death in 1991, at the age of 63 years. He was born out of wedlock in Saint Lucia on 1st March 1963, to his mother, Celina Phillip of Laborie and father, Mr. Harold Longville. It was noted that Mr. David Phillip produced no documents to support his relationship to Mr. Harold Longville or Ms. Luciana Longville. He began to reside in 1986 on the Property with Mr. Harold Longville and following his death, has continued to exclusively occupy the Property. In 1987, he set up a refreshment house in which he carried on a business, and following Mr. Harold Longville's death, he renovated the building and started operating a restaurant and bar business and which business he continued to operate undisturbed for over 26 years. He recalled that dating back to 1960 it was Ms. Luciana Longville who paid taxes on the land and then he started paying from 1986 until the Council refused to accept his payment. He said that the Will of Celina Phillip dated 10th January 1974, which was used to register her as proprietor made no reference to the Property.

- [12] The Court cites verbatim as they are instructive, certain paragraphs of Mr. David Phillip's witness statement:

"9. I **claim for prescription of title to the land** by virtue of my occupation and my predecessor's occupation, we having lived undisturbed and in peaceable occupation as owners of the land **for over thirty years**.

13. The period of my claim to **prescription of title of the land** was established long before 1986 by virtue of my grandmother's and father's occupation which was exclusive, peaceably, continuous and uninterrupted as owners from the 1930's onwards." (My emphasis)

- [13] Mr. Phillip Jules gave evidence on behalf of Mr. David Phillip. His evidence was used to bear out that there was a relationship between Ms, Luciana Longville, Mr. Harold Longville and Mr. David Phillip and that he knew Mr. David Phillip to be on the Property from the 1980s.

Findings and Analysis

- [14] During closing submissions, it appears that Counsel for Mr. David Phillip was seeking to turn his pleadings and statements in his witness statement of "prescription of title to the land" or "of the land" on its head. He alleged and went to great lengths to show that the pleadings in the defence and counterclaim were not caught by the ruling in **SLUHCVAP 2017/0050 Ferdinand James v. [1] Planviron (Caribbean Practice) Limited [2] Rodney Bay Marina Limited**. He said that Mr. David Phillip defence was that Mr. Joseph's "claim is prescribed" based on the long occupation and possession by Mr. David Phillips, Mr. Harold Longville and Ms. Luciana Longville and he relies on articles 2056 and 2057 of the **Civil Code**.
- [15] The **Civil Code** Book Nineteenth which includes articles 2047 to 2132 bears the heading "PRESCRIPTION". Chapter First is stated to provide "GENERAL PROVISIONS", Chapter Second states "POSSESSION", Chapter Third "THE CAUSES WHICH HINDER PRESCRIPTION, INCLUDING PRECARIOUS POSSESSION AND SUBSTITUTIONS", Chapter Fourth "CERTAIN THINGS IMPRESCRIPTIBLE AND OF PRIVILEGED PRESCRIPTIONS", Chapter Fifth "THE CAUSES WHICH INTERRUPT OR SUSPEND PRESCRIPTION" Chapter Sixth "THE TIME REQUIRED TO PRESCRIBE". The subsequent chapters also solely address the matter of prescription the subject matter of the case³ earlier cited. As

³SLUHCVAP2017/0050 Ferdinand James v. [1] Planviron (Caribbean Practice) Limited [2] Rodney Bay Marina Limited.

the Court sees it, Book Nineteenth provides a holistic capturing of all matters which the legislators thought of at the time could arise in relation to "Prescription". There is no provision for pulling a part of it to support some other type of claim – a prescribed claim.

[16] The Court on an overview of Mr. David Phillip's pleadings and the very language highlighted above in his pleadings and witness statement and bearing in mind its interpretation of Book Nineteenth of the **Civil Code** and wherein articles 2056 and 2057 fall, finds that it must reject Mr. David Phillip's defence and counterclaim that Mr. Joseph Phillip's claim is prescribed.

[17] Mr. Phillip's defence and counterclaim are struck out and judgment is entered for Mr. Joseph Phillip.

[18] Court's Orders:

1. The Court declares that Mr. Joseph Phillip as administrator of the estate of Celina Phillip is the registered owner of the Property and is entitled to possession of the Property.
2. Mr. David Phillip is to deliver up possession and vacate the Property at the expiration of 30 days following delivery of this judgment.
3. At the expiration of 30 days (order 2 above) Mr. David Phillip, his agents representatives, or servants are restrained from entering the Property and having any dealings whatsoever with the Property.
4. After the expiration of 30 days, Mr. Joseph Phillip, his representatives, servants or agents are at liberty to destroy and discard any and all buildings on the Property.

5. Mr. Joseph is awarded prescribed costs.

**Rosalyn Wilkinson
High Court Judge**

By The Court

A stylized, handwritten signature in black ink, consisting of a large, flowing loop followed by a horizontal line that extends to the right.

Registrar