

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2019/0017

BETWEEN:

ZINNA ZIMBANNI

(As Personal Representative of the Estate of Adelaide Joseph, deceased)

Appellant

and

COMPUTRON LIMITED

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Paul Webster
The Hon. Mde. Esco Henry

Chief Justice
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Ms. Natalie Da Breo for the Appellant
Ms. Paulette Francis for the Respondent

2021: June 29;
2022: January 10.

Civil appeal – Land law – Land Registration Act Cap. 5.01 of Revised Laws of Saint Lucia - Land Adjudication Act Cap.5.06 of Revised Laws of Saint Lucia – Land Registration and Titling Project – Appellate court’s interference with trial judge’s findings of fact – Whether learned judge erred by failing to find respondent’s root of title defective – Indefeasibility of title – Section 98 of Land Registration Act – Exceptions to indefeasibility of title – Fraud and mistake – Allegations of fraud and mistake must be expressly pleaded – Failure to introduce issues during trial – Prescription – Article 2057 of Civil Code of Saint Lucia – Article 2057 of the Supreme Court Prescription by 30 years (Declaration of Title) Rules – Possession to be continuous, uninterrupted, peaceable, public and unequivocal – Interruption of prescription by first registration – Whether learned judge erred in fact and law by finding that appellant failed to satisfy requisite 30-year prescriptive period – Overriding interest – Section 28 (f) and (g) of the Land Registration Act – Protection of rights of a person in actual occupation –

Whether learned judge erred by finding that appellant had not acquired an overriding interest in subject land under section 28 (f) or (g) of the Land Registration Act – Costs – Prescribed costs – Rule 65.5(2) (b) of Civil Procedure Rules 2000 – Whether learned judge erred in awarding prescribed costs to respondent

This is an appeal arising out of a property dispute between Ms. Adelaide Joseph (“Ms. Joseph”) and Computron Limited (“Computron”). Ms. Joseph, now deceased, is represented by her personal representative Ms. Zinna Zimbanni.

In November 2007, Computron purchased land being Block 0849D Parcel 284 (“the disputed land”) from Mr. Gilbert Phillip (“Mr. Phillip”), Ms. Joseph’s brother. This purchase was executed by Deed of Transfer (“Deed”) from Mr. Phillip to Computron and is evidenced in the Land Register. Prior to this purchase, Ms. Joseph had occupied the disputed land along with a number of other tenants. After the purchase, Computron rented to those tenants their respective holdings and collected the rent. They were later issued with notices to quit the disputed land to facilitate Computron’s construction of a commercial building. They all complied and vacated the property. Ms. Joseph had not at that point been served a notice to quit.

Mr. Goddard Darcheville (“Mr. Darcheville”), the managing director of Computron, having developed a friendship with the elderly Ms. Joseph and having noticed that her house was deteriorating and in need of repairs, offered to build her a new 3-bedroom wooden house on neighbouring land owned by another of his companies, CES Ltd. Mr. Darcheville offered that Ms. Joseph would be granted a life interest in the new house, where she could live with her two sons, until her death, at which time it would revert to CES Ltd. While initially Ms. Joseph welcomed the offer, she later refused it, on the basis that she would have only a life interest in the new home. As a result, Computron issued Ms. Joseph a notice to quit the disputed land in March 2014, within one month. Ms. Joseph refused to leave and consequently, Computron sued her in the High Court for possession of the disputed land.

In the court below, Ms. Joseph counterclaimed, contending that she had acquired an overriding interest in the disputed land by virtue of her long occupation of it for over 70 years. She also asserted that she had thereby gained prescriptive title to it and was therefore entitled to legal title of the disputed land. Ms. Joseph also contended that Computron’s root of title to the disputed land was defective. She claimed that Mr. Phillip’s title and therefore Computron’s root of title was null and void because documents in the chain of title, including the Will of Sephanise Joseph (a previous owner), the subsequent probate (“Probate”), vesting deed and vesting assent, were defective.

The learned trial judge held that Ms. Joseph had not made out her claim and dismissed it. The learned judge reasoned that: (i) Ms. Joseph’s contentions as to the validity of Mr. Phillip’s title were speculative and that Computron was a purchaser for value acting in good faith, having acquired from Mr. Phillip good and indefeasible title to the disputed land, notwithstanding any conceivable defect or infirmity in Mr. Phillip’s title; (ii) that in any event the only bases on which rectification of the Land Register could be entertained at that stage were if fraud or mistake was pleaded and established, which she concluded that Ms. Joseph had not alleged and proven; (iii) that Ms. Joseph had not acquired title by prescription because her possession of the land was not as owner but pursuant to permission from the

owner; (iv) that Ms. Joseph's claim to an overriding interest under the Land Registration Act ("LRA") hinged on rights acquired by prescription; (v) Ms. Joseph's failure to prove her claim to prescriptive title meant that any claim to an overriding interest under section 28 (f) and/or (g) of the LRA must fail. Ms. Joseph was therefore directed to deliver up possession of the disputed land and to pay costs of \$7500.00 to Computron on its claim and the counterclaim.

Ms. Joseph, being dissatisfied with the learned judge's decision has appealed. The main issues which arise for the Court's determination are: (i) whether the learned judge erred by failing to find that Sephanise Joseph never owned the disputed land; and that her Last Will, the Probate, vesting deed and vesting assent were defective, null and void and rendered Mr. Phillip's and Computron's root of title defective, null and void; (ii) whether the learned judge erred in fact and law, by finding that Ms. Joseph did not possess the disputed land for the requisite 30-year period and did not acquire prescriptive title; (iii) whether the learned judge erred by finding that Ms. Joseph had not acquired an overriding interest in the disputed land under section 28 (f) or (g) of the LRA based on her claim to prescriptive title; and (iv) whether the learned judge erred in awarding prescribed costs of \$7,500.00 to Computron in respect of its claim and the counterclaim by Ms. Joseph.

Held: dismissing the appeal; affirming the judgment in the court below; and awarding costs to the respondent on this appeal of no more than two-thirds of the prescribed costs awarded in the court below, that:

1. An appellate court may interfere with a trial judge's findings of fact in limited circumstances. It should only interfere with the trial judge's findings of fact if it is satisfied that the trial judge's ruling is unsafe due to a significant error made in assessing the evidence, be it by overlooking or discounting critical material, applying the wrong legal principles to his evaluation of the evidence or for some other substantial reason. In this case, it was open to the learned judge having addressed her mind to the applicable rules of court and having assessed the witnesses, their demeanour, and credibility, to conclude that there was no evidence on which to find that Computron's root of title, Sephanise Joseph's Will, Probate, the vesting deed and vesting assent were defective. Her findings of fact were commensurate with the evidence and the weight that she reasonably ascribed to it. Accordingly, the learned judge's findings in this respect cannot be impugned.

Watt (or Thomas) v Thomas [1947] 1 ALL E.R. 582 applied; **Betteto Frett and Flagship Properties Limited** [2011] ECSCJ No. 220 (delivered 27th September 2011) followed; **Beacon Insurance Company Limited v Maharaj Bookstore Ltd** [2014] UKPC 21 applied.

2. In order to be considered, assertions of fraud and mistake must be expressly pleaded by a litigant in the court below. Further, a litigant will not be permitted to introduce at the appellate level, issues which were not before the lower court. In these circumstances, where the appellant, Ms. Joseph, did not expressly plead or outline the essential features of fraud and/or mistake in the court below and belatedly introduced the issues of fraud and mistake before this Court, her contentions regarding mistake and fraud, being new, cannot be entertained.

Drane v Evangelou and others [1978] 1 WLR 455 considered; **Austin Martin, Executor of the Estate of Mary Edith Doreen Grason v The Attorney General of Antigua and Barbuda** [2009] ECSCJ No. 347 (delivered 24th April 2009) followed; **Newport (Monmouth) Slipway Dry Dock and Engineering Co Ltd v Paynter** (1886) 34 Ch D 88 applied.

3. In Saint Lucia prescription is governed by Article 2103A of Civil Code and Article 2057 of the Supreme Court – Prescription by 30 years (Declaration of Title) Rules. The conjoint effect of these provisions is that title to land is prescribed by 30 years, during which the possession must be continuous, uninterrupted, peaceable, public and unequivocal. However, where there is first registration of title to land under the LRA, this has the effect of interrupting any period of possession for the purposes of acquiring prescriptive title, which started before or during the Land Registration and Titling Project (“LRTP”). It follows that once possession is interrupted by such first registration, a person seeking to acquire title by prescription or adverse possession must remain in continuous, uninterrupted, peaceable, open and unequivocal possession of the subject land for a fresh period of 30 years, commencing at some point after the date of such interruption. In this case, there is abundant probative and relevant evidence on which the learned judge could reasonably have found that any possession which Ms. Joseph exercised over the disputed land before and during the LRTP, was interrupted by Mr. Phillip’s registration as owner in September 1987; that period of possession from the date of first registration to the day that Computron served her with its the claim, had not met the requisite 30-year prescription period; and that Ms. Joseph’s possession of the disputed land was by consent from the owner Computron and was accordingly equivocal and inadequate to satisfy the factual and legal requirements of prescription. Therefore, the learned trial judge cannot be faulted for finding that Ms. Joseph’s possession did not satisfy the Code’s 30-year pre-requisite. Her evaluation of the evidence in relation to Ms. Joseph’s prescription defence and counterclaim is unassailable.

Article 2103A of the **Civil Code of Saint Lucia** Cap. 4:01 Revised Laws of Saint Lucia applied; Article 2057 of the **Supreme Court Act – Prescription by 30 years (Declaration of Title) Rules** Cap. 2:01 Revised Laws of Saint Lucia applied; **JA Pye (Oxford) Ltd. and others v Graham and another** [2002] UKHL 30 applied; **British American Cattle Co v Caribe Farm Industries Ltd (in receivership)** [1998] 53 WIR 101 applied; **Moses Joseph et al v Alicia Francois** SLUHCVP2011/0025 consolidated with SLUHCVP2012/0037, (delivered 21st August 2015, unreported) followed.

4. It is evident that the learned judge did not misconstrue the submissions of Ms. Joseph in relation to her prescription defence and counterclaim or her overriding interest claims pursuant to section 28 (f) and (g) of the LRA. The learned judge captured and succinctly outlined Ms. Joseph’s contentions in her analysis in the judgment. She also addressed those contentions comprehensively. Further, having indicated that the learned judge’s determination on the prescription issue

cannot be faulted and having dismissed the related ground of appeal, it follows that this aspect of the appeal is without merit.

Section 28(f) and (g) of the **Land Registration Act** Cap. 5.01 of the Revised Laws of Saint Lucia applied.

5. Section 28(g) of the LRA protects the rights of a person in actual occupation. It does not however protect the actual occupation of the land itself, as it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, for the treatment of the right as an overriding interest. In this case, Ms. Joseph relied on the actual occupation of the disputed land to ground the overriding interest claimed under section 28 of the LRA and failed to state in her counterclaim what rights if any, she was asserting under section 28(g). Her counterclaim as such failed to engage any protection under that provision. Accordingly, the learned judge's findings that Ms. Joseph could not have acquired an overriding interest under the LRA cannot be impugned.

Section 28(g) of the **Land Registration Act** Cap. 5.01 of the Revised Laws of Saint Lucia applied; **Spiricor of St Lucia Ltd v Attorney General of Saint Lucia and Another** (1997) 55 WIR 123 followed.

6. A successful party is generally entitled to costs. There being no reason advanced which commended a departure from the general rule of awarding costs to the successful party and Computron having prevailed in both claims was entitled to prescribed costs in accordance with rule 65.5(2) (b) of the CPR. The learned judge having applied the formulae in Appendices B and C of the CPR correctly, arrived at the appropriate costs award. Accordingly, there is no discernible error committed by the learned judge which could justify appellate interference with her costs award.

Rule 65.5(2) (b) of the **Civil Procedure Rules 2000** applied.

JUDGMENT

Introduction

- [1] **HENRY JA [AG.]**: Conflicts about land ownership can overshadow all types of relationships and sometimes persist from one generation to another. In the case at bar, Ms. Adelaide Joseph's estate (represented by her personal representative Ms. Zinna Zimbanni) is pitted against Computron Limited ("Computron") in a property dispute spanning several years.

- [2] On 26th June 2014, Computron sued Ms. Joseph in the High Court for possession of a parcel of land (“the disputed land”) which it purchased from Mr. Gilbert Phillip who happened to be Ms. Joseph’s brother. Ms. Joseph resisted the claim. She contended that she had acquired an overriding interest in the disputed land by virtue of her long occupation of it for over 70 years. She also asserted that she had thereby gained prescriptive title to it. She claimed that she was therefore entitled to legal title of the disputed land.
- [3] Ms. Joseph contended that Computron’s root of title to the disputed land was defective because it purports to emanate from someone other than the owner. She claimed against Computron a declaration that she held an overriding interest in the disputed land; rectification of the Land Register and an injunction to restrain Computron from occupying the disputed land.
- [4] The learned trial judge found that Ms. Joseph had not made out her claim and dismissed it. Judgment was entered for Computron. Ms. Joseph was directed to deliver up possession of the disputed land. Costs of \$7,500.00 each was awarded to Computron on its claim and the counterclaim. Being dissatisfied with the judgment, Ms. Joseph has appealed. She challenged certain findings of fact and law and asked that the trial judge’s order be set aside and the case remitted to the court below to be tried by another judge.

Background

- [5] Computron’s claim to ownership of the disputed land is grounded in the registered title arising from its purchase from Mr. Gilbert Phillip. Ms. Joseph’s counterclaim rests on assertions about events which commenced over 73 years ago and have allegedly persisted to the present.
- [6] Computron was represented in this case by its managing director Mr. Goddard Darcheville. He produced a copy of a Deed of Transfer¹ (“Deed”) from Mr. Phillip to

¹ Deed of Sale No. 71 of 2008.

Computron and the Land Register evidencing Computron's registered title as absolute owner of the disputed land being Block 0849D Parcel 284.

- [7] Mr. Darcheville testified that Computron bought the disputed land from Mr. Phillip on 6th November 2007. He explained that before the purchase Mr. Phillip introduced him to Ms. Joseph who resided on the land in a wooden dwelling house. He observed that the land was also occupied by a number of tenants. After the purchase, Computron rented to those tenants their respective holdings and collected the rent. They were later issued with notices to quit the disputed land to facilitate Computron's construction of a commercial building. They all complied and vacated the property.
- [8] Mr. Darcheville indicated that he had developed a friendship with Ms. Joseph who was elderly so she was not initially served with a notice to quit. Mr. Darcheville said that he noticed that her house was deteriorating and in need of repairs and he was motivated by concern for her well-being. Therefore, acting on behalf of another of his companies,² Mr. Darcheville offered to build her a new 3-bedroom wooden house on a neighbouring land owned by that company. At first, Ms. Joseph welcomed the offer and arranged for electricity and water services to be supplied to the new house in her name. A letter dated 14th March 2014 addressed to LUCELEC³ requesting transfer of her electricity meter to the new house and signed by her was adduced into evidence.
- [9] Mr. Darcheville said that he explained to Ms. Joseph that she would be granted a life interest in the new house, that she could live there with her two sons, and that it would revert to CES Ltd. when she died. He produced a letter dated 14th March 2014 and signed by Ms. Joseph in which she agreed: -

- a) to occupy the new dwelling house that was built by CES Ltd.;

² Computer and Electrical Services ("CES Ltd.").

³ St. Lucia Electricity Services Limited.

- b) to make use of the house and upkeep it in the best possible condition at all times;
- c) that the land on which the new house is built does not belong to her;
- d) that she has no vested interest in the house and no claim to title to it while alive or after her death; and
- e) that CES Ltd. is the sole owner of the property at all material times.

[10] Mr. Darcheville averred that while Ms. Joseph was eager to move into the new house, her daughter Ms. Betty Alphonse intervened and made certain requests as conditions precedent to the move. Ms. Alphonse asked that the house be painted, that an internal bathroom be constructed and she insisted that title to the new house be given to Ms. Joseph's two sons who lived with her. Mr. Darcheville declined to make those adjustments. Ms. Joseph remained in her existing house. On 27th March 2014, Computron issued Ms. Joseph a notice to quit dated 26th March 2014, demanding that she quit occupation of the disputed land within one month. She refused to leave. Consequently, Computron filed this suit.

[11] Ms. Alphonse and her son Mr. Philbert Lubrin testified on Ms. Joseph's behalf. Mr. Lubrin stated that he was born on the disputed land in 1983 and lived with Ms. Joseph in the existing house until he was 2 years old. He insisted that the house has always been situated in that location and has undergone no change in structure since 1983. Like his mother, he described certain landmarks which have existed on the disputed land for many years.

[12] Ms. Alphonse maintained that her mother has lived in the house since the age of 6 months. She stated that to the best of her information and belief, her mother was taken to live there at that age by her aunt Mrs. Agnes Labelle and her husband Stephen Etienne Labelle. She averred that Mr. Labelle owned the existing house and the surrounding lot of land, having purchased it from Leonise Cassius Joseph

on 1st September 1920. She produced a deed to that effect. Ms. Alphonse was adamant that Ms. Joseph had never lived elsewhere and has been in continuous and uninterrupted occupation of the existing house on the disputed land for all 78 years of her life.

[13] Ms. Alphonse asserted that even before Mr. Darcheville purchased the land, he offered to build another wooden structure for her mother and at that time asked her to vacate the existing house. She averred that Ms. Joseph refused the offer of a new home when she was told that she would have only a life interest in it, and because Mr. Darcheville refused to paint the house and build her an enclosed bathroom. She accepted that those were the real reasons that the offer was refused and not because Ms. Joseph had any interest in the disputed land.⁴

[14] Ms. Alphonse asserted that when Computron bought the disputed land, it knew that Ms. Joseph occupied the existing house. She insisted that Computron has no good title to the disputed land because it forms part of the parcel of land that Leonise Cassius Joseph sold to Stephen Labelle in 1920. She explained that Mr. Labelle pre-deceased his wife Agnes and added that she is unaware that he sold or bequeathed the land to anyone. She averred that therefore Computron 'may not' have good title to the disputed land.

[15] Ms. Alphonse produced a Will purporting to be the last Will and Testament of Sephanise Joseph dated 28th November 1980. She asserted simply that she is informed and believes that Computron does not have good title to the disputed land because the gift at paragraph 3 of the Will must fail since the property described there did not belong to Sephanise Joseph, it having been purchased by Stephen Labelle in 1920. Paragraph 3 of the Will states:

“I give devise and bequeath to my grand nephew Dan Placide of Castries the portion of land (i.e. the house spot) on which the chattel house of Adelaid Joseph now stands.”

⁴ Page 276 (EP), lines 3-17 of the Record of Appeal.

She averred that the Probate of the said Will is null and void in so far as it refers to the property sold to Stephen Labelle.

- [16] Ms. Alphonse also produced a vesting deed dated 21st April 1987,⁵ whereby the disputed property was conveyed to Dan Placide and Gilbert Phillip pursuant to the devise in Sephanise Joseph's Will. In relation thereto she stated that she is informed and believes that the vesting deed is null, void and of no effect and this is further reason for her belief that Computron does not have good title to the disputed property and why she also believes that Computron's Deed is null, void and of no effect.
- [17] The learned trial judge concluded that there is no evidence of what transpired in relation to the disputed land prior to the land adjudication process except that the adjudication record dated 11th July 1987 reflects that Mr. Phillip was recorded as having acquired title to it by way of inheritance. She found that Ms. Alphonse's assertions and Ms. Joseph's contentions as to the validity of Mr. Phillip's title were speculative. She opined that those matters were moot and irrelevant, having regard to the scheme and effect of the Land Registration and Titling Project ("LRTP") in Saint Lucia and the nature of the Torrens System of land registration, in particular the principle of indefeasibility of title.
- [18] She reasoned that even if Mr. Phillip's title was defective, Computron was not obligated to go behind the Land Register and enquire as the validity of Mr. Phillip's title. She found that since Computron was a purchaser for value acting in good faith, it acquired from Mr. Phillip good and indefeasible title to the disputed land, notwithstanding any conceivable defect or infirmity in Mr. Phillip's title. She ruled that the court was not entitled to examine whether Mr. Phillip's root of title is defective as alleged and she declined to do so.

⁵ Registered in the Office of Deeds on 28th April 1987 in Volume 140A Number 157578.

- [19] She opined that in any event the only bases on which rectification of the Land Register could be entertained at that stage were if fraud or mistake was pleaded and established. She concluded that Ms. Joseph had alleged and proven neither.
- [20] Regarding Ms. Joseph's claim to a proprietary interest in and title to the disputed land by virtue of prescription for a period in excess of 30 years, the learned judge found that Ms. Joseph had not acquired title by prescription because her possession of the land was not as owner but pursuant to permission from the owner. She reasoned that even if Ms. Joseph had been in possession of the disputed land since 1939 as alleged, first registration of the property by Mr. Phillip in 1987 interrupted her possession. She concluded that consequently, her period of possession between then and the date of her counterclaim in 2014, fell short of the requisite 30 years and therefore her claim to prescriptive title must fail.
- [21] The learned trial judge acknowledged that the **Land Registration Act**⁶ ("LRA") protects certain overriding interests from being undermined by a competing registration of a proprietor with absolute title. In this regard, she accepted that rights acquired or in the process of being acquired and a proprietary right coupled with actual occupation of land were the overriding interests which were protected by section 28 (f) and (g) of the LRA. However, she ruled that Ms. Joseph's claim to an overriding interest under both provisions hinged on rights acquired by prescription, as submitted by her legal practitioner. The learned judge ruled that since Ms. Joseph's claim to prescriptive title was not made out, her reliance on prescription to ground an overriding interest under section 28 (f) and/or (g) of the LRA must fail.
- [22] Ms. Zimbanni set out 12 separate grounds of appeal challenging among other things, the learned judge's findings of fact as to Computron's root of title. The other criticisms concerned the court's ruling that Ms. Joseph's claim to prescriptive title

⁶ Act No. 12 of 1984, now Cap. 5:01 of the Revised Laws of Saint Lucia.

and an overriding interest in the disputed land were not made out; and the award of costs.

[23] She contended that the learned judge erred when she ruled as a matter of fact that Computron had a lawful root of title to the disputed property on the basis of its Deed and Sephanise Joseph's Will. I must interject to point out that while it is open to Ms. Zimbanni to interpret the learned judge's decision in this light, the learned judge did not rule expressly that Computron's root of title was based on Sephanise Joseph's Will.

[24] At the hearing of the appeal, Ms. Zimbanni withdrew ground 4 of the appeal which complained that the learned judge made an error by failing to consider that Sephanise Joseph's Will 'sought to separate the house from the land'. I would therefore dismiss that ground of appeal.

Issues

[25] The remaining grounds of appeal may be conveniently and adequately distilled into the following four issues: -

- (1) Whether the learned judge erred by failing to find that Sephanise Joseph never owned the disputed land; and that her Last Will, the Probate, vesting deed and vesting assent emanating therefrom being defective, null and void rendered Mr. Phillip's and Computron's root of title defective, null and void? (Root of title issue)⁷
- (2) Whether the learned judge erred in fact and law, by finding that Ms. Joseph did not possess the disputed land for the requisite 30-year period and did not acquire prescriptive title thereto? (Prescriptive title issue)⁸

⁷ Grounds of appeal numbered 1, 3, 5, 6, 7 (first) and 8.

⁸ Grounds of appeal numbered 7 (second) and 10.

- (3) Whether the learned judge erred by finding that Ms. Joseph had not acquired an overriding interest in the disputed land under section 28 (f) or (g) of the LRA based on her claim to prescriptive title? (Overriding interest issue)⁹
- (4). Whether the learned judge was right to award prescribed costs of \$7,500.00 to Computron in respect of its claim and the counterclaim by Ms. Joseph? (Costs issue)¹⁰

Legislative Framework

- [26] Resolution of the foregoing issues requires consideration of three main pieces of legislation which govern the land adjudication process, registration of title to land, and the acquisition of prescriptive and/or overriding interests in land. It is helpful to start by outlining some of the relevant statutory provisions around which the respective claims arise. After setting out those provisions, I will consider each issue in turn.
- [27] In or about 1984, the Torrens System of land registration was introduced in Saint Lucia. It was facilitated by the passage of two pieces of legislation – the **Land Adjudication Act**¹¹ (“LAA”) which came into force on 8th August 1984; and the LRA which came into force on 15th July 1985. The LAA established the procedures by which interests in land throughout the nation were to be reported, claimed, advertised, investigated, adjudicated and recorded. It also made provision for the appointment of designated officers to carry out the several processes. On final adjudication under the LAA of title to any piece of land, the certified adjudication record was submitted to the Registrar of Lands to effect first registration under the LRA. The LRA governs all matters relating to first registration of title to land and all subsequent dealings with land so registered.

⁹ Grounds of appeal numbered 2 and 9.

¹⁰ Ground of appeal 11.

¹¹ Act No. 11 of 1984, now Cap. 5.06 of the Revised Laws of Saint Lucia.

- [28] It is now accepted that regarding first registration of title, Parliament intended that both statutes should operate together harmoniously to realise the objectives of the Land Registration and Titling Project - 'LRTP' as it is commonly called. The main functionaries under the LAA were the Minister, the adjudication officer, the recording officer, the demarcation officer and the survey officer. The Minister of Agriculture was required to designate adjudication areas throughout the country, to appoint an adjudication officer for each area and set up a Land Adjudication Tribunal to hear and determine appeals arising from decisions of the adjudication officer.
- [29] The adjudication officer was responsible for receiving and determining claims in his adjudication area. For this purpose, he was expected to divide his adjudication area into adjudication sections and through advertisements, to invite claims from the general public regarding ownership of lands within each section.¹² He was empowered to appoint demarcation officers, recording officers, and survey officers to assist respectively with collecting information, conducting surveys, demarcating boundaries after due publication of notices¹³ to the public and for resolving disputed claims to ownership of land in each adjudication section. The recording officer was required to complete and sign the adjudication record in respect of each parcel of privately owned land. Where possible, he was expected to arrange for the owner and each person claiming an interest in it to sign an acknowledgment accepting the record.¹⁴
- [30] It was the adjudication officer's duty to certify the adjudication record as complete by signing a certificate to that effect. He was also required to issue to the public, notification of its completion and indicate the places where the related demarcation map and completed adjudication record may be inspected. After the time for appeals and petitions had expired or 90 days had passed from the publication of the notice and the completed adjudication record (whichever was later) the adjudication record was deemed to be final, subject to the provisions of the LRA. The adjudication officer

¹² Sections 5 and 6 of the LAA.

¹³ Sections 10 to 15 of the LAA.

¹⁴ Section 18 of the LAA.

then had to certify the record as final and deliver the certified adjudication record and demarcation map to the Registrar of Lands along with all documents submitted to him during the adjudication process.¹⁵

[31] The LAA empowered the adjudication officer to carry out his functions even in cases where an owner was absent from the jurisdiction or if it was a minor who was present in the State. He was also responsible for resolving any boundary disputes referred to him by the demarcation officer and all conflicting claims to interest in land referred to him by the recording officer.¹⁶ An appeal lay from a decision of the adjudication officer to the Land Adjudication Tribunal.¹⁷

[32] Once the certified adjudication record was submitted to the Registrar of Lands, the adjudication officer's functions ceased. On receipt of the certified adjudication record, the Registrar of Lands was responsible for preparing a register for each parcel of land shown in the record. The Registrar was obligated to enter in the Land Register relevant details of all titles to land that had been adjudicated (whether owned privately or by the Crown) and of any lease or other interests which are required to be registered.¹⁸

[33] Very importantly, the LRA contained provisions which preserve several types of unregistrable overriding interests or rights in land. Among them are rights acquired or being acquired by prescription or the limitation law; and rights of a person in actual occupation. The applicable provisions are sections 23 and 28 (f) and (g).

[34] Section 23 provides: -

"23. Effect of registration with absolute title

Subject to the provisions of sections 27 and 28 registration the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and

¹⁵ Section 23 of the LAA.

¹⁶ Section 15 of the LAA.

¹⁷ Sections 20, 21, 22 and 24 of the LAA.

¹⁸ Section 9 of the LRA.

privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, hypothecs and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) **unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.**" (Emphasis added)

[35] Section 28(f) and (g) state: -

"28. Overriding interests

Unless the contrary is expressed in the register, **all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register ...**

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed; ...

However, the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he or she thinks fit." (Emphasis added)

[36] Section 38 of the LRA embodies certain protections for persons dealing with land registered under its provisions. Among other things, it relieves such a person from any obligation to inquire into the circumstances or terms and conditions under which the previous owner or any prior owners were registered. It states: -

"38. Protection of persons dealing in registered land

(1) A person dealing or proposing to deal for consideration with a proprietor shall not be required or in any way concerned—

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the provisions of Book Eighteenth of the Civil Code.

(2) Where the proprietor of land, a lease or a hypothec is a trustee he or she shall in dealing therewith be deemed to be the proprietor thereof, and no disposition by such trustee to a purchaser in good faith and for consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

(3) Nothing contained in this section shall relieve a purchaser in good faith and for consideration of his or her obligation to search the Registry.”

[37] Under the LRA¹⁹ the High Court is empowered to order that any entry in the Land Register be cancelled or amended, if it is proven that such entry was occasioned through fraud or mistake. However, no such rectification may be made if the registered owner acquired the land for consideration and had no knowledge of and did not cause the fraud, mistake or omission on which the application for rectification is based.

[38] Section 98 of the LRA provides:

“(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.”

Issue 1 - Root of title

[39] Ms. Zimbanni dedicated 7 of her grounds of appeal²⁰ to findings of fact regarding the root of title complaints.⁷ She contended that the learned judge erred by failing to find that: -

(a) the disputed land was never owned by Sephanise Joseph;

(b) Sephanise Joseph’s Will was null and void and formed no basis on which the testatrix gained possession of the disputed lands;

¹⁹ Section 98 of the LRA.

²⁰ Including ground 4 which was withdrawn.

(c) the Probate of that Will was null, void and ineffective to pass title of the disputed land to her named beneficiary;

(d) the vesting deed which purported to give effect to the devise in that Will was null, void and ineffective; and

(e) Computron had no lawful root of title.

[40] Learned counsel Ms. Da Breo contended that the court did not take full advantage of the position which it enjoyed as a tribunal of fact. She acknowledged that an appellate court may interfere with a trial judge's findings of fact in limited circumstances. She submitted that the instant case satisfies the requirements for this Court to override the factual findings made by the learned judge on the issue of Computron's root of title.

[41] She relied on the pronouncement of Lord Roskill in the case of **Choo Kok Beng v Choo Kok Hoe & Others**²¹ which was adopted by the Board in **Beacon Insurance Company Limited v Maharaj Bookstore Ltd.**²² Lord Roskill had this to say: -

"Their Lordships are well aware, as no doubt were the Court of Appeal, of the limited circumstances in which it is open to an appellate court to reverse the findings of a trial judge based on credibility of the witnesses who have given evidence at the trial. But when a trial judge has so manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial and, in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him, it is the plain duty of an appellate court to intervene and correct the error lest otherwise that error result in serious injustice."²³

[42] Learned counsel submitted that the instant case was not based entirely on the witnesses' credibility and therefore their manner and demeanour were inconsequential to a finding of where the truth resided as to the root of title. She argued that before the absolute nature of the title could be decided, the learned

²¹ [1984] 2 MLJ 165.

²² [2014] UKPC 21.

²³ [1984] 2 MLJ 165. at pp 168-169.

judge was required to trace and locate the root of title. She contended that tracing of the root of title was predicated not on the witnesses' credibility, but rather on an adequate assessment of the documentary evidence that Ms. Joseph attached to her pleadings. She submitted that the fact that Computron was not required to prove its absolute title in light of the allegations of the overriding interest meant that the real issue was not decided. She argued that this was a demonstrable flaw in the process by which the learned judge arrived at her conclusion.

[43] She argued that when a claim for absolute title is made which is disputed, certain facts are to be found, because pursuant to section 23 of the LRA absolute title is subject to such liabilities, rights and interests as covered by section 28. She submitted further that the learned judge drew inferences which were incapable of justification on the evidence and failed to draw inferences which were clearly available on the evidence. She did not identify any instances of this.

[44] On Computron's behalf, learned counsel Ms. Francis cited the case of **Watt (or Thomas) v Thomas**²⁴ where Lord Thankerton identified the applicable principles that guide an appellate court faced with a request to overturn findings of fact. Learned counsel submitted that those principles have been referred to and applied in a number of cases emanating from this Court including **Jerome Montoute (By his Personal Representative, Theodora Montoute) v The Attorney General of Saint Lucia**,²⁵ **Betteto Frett and Flagship Properties Limited**²⁶ and **Grenada Electricity Services Ltd v Issac Peters**.²⁷ She submitted further that the learned judge's decision was based on the evidence presented at trial; that she had the opportunity to examine all of the documentary evidence and the witnesses' testimonies and arrived at her decision based on that evidence and in keeping with the law. She contended that the transcript contains no evidence to

²⁴ [1947] 1 ALL E.R. 582 at pg. 587.

²⁵ [2019] ECSCJ No. 205 at page 13.

²⁶ [2011] ECSCJ No. 220 (delivered 27th September 2011) para. 4.

²⁷ GDAHCVAP2002/0010, (delivered on 28th January 2003, unreported).

suggest that the learned judge erred on the findings of fact but rather that it supports a finding that she applied the law correctly and made no error in her fact finding.

- [45] The judgment in **Watt (or Thomas) v Thomas** is regarded as the *locus classicus* in respect of an appellate court's stance regarding interference with the factual findings of a lower court. In that case, Lord Thankerton opined: -

"I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."²⁸

- [46] Those principles have been adopted and applied repeatedly by this Court in many cases. In **Betteto Frett**, after highlighting the **Watt (or Thomas) v Thomas** case Justice of Appeal Ola Mae Edwards while delivering the oral judgment of the Court of Appeal declared: -

"... an appellant who challenges findings of fact faces a serious hurdle. A Court of Appeal should attach the greatest weight to the opinion of the judge who saw the witnesses and heard the evidence, and consequently should not disturb a judgment of fact unless they are satisfied that it is unsound."

- [47] In **Beacon Insurance Company Limited v Maharaj Bookstore Ltd.** the Board rehearsed and applied those principles. It added: -

"The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the

²⁸ [1947] 1 ALL E.R. 582 at pg. 487-488.

entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165 at 168–169 (Lord Roskill).”²⁹

- [48] The Board also stressed that there are good reasons why a trial judge’s findings of primary fact will seldom be set aside. It observed that as articulated by Lord Neuberger: - ³⁰

“[T]his is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first).”³¹ (Emphasis added)

- [49] The Board emphasised that unless the appellate court is satisfied that the trial judge ‘palpably misused his advantage’ of seeing and hearing the witnesses and evaluating the evidence, it should not reverse findings of fact simply because its own views of the probabilities of the case is different. The Board remarked: -

“As Lord Bridge of Harwich stated in *Whitehouse v Jordan* [1981] 1 ALL ER 267 at 286 [1981] 1 WLR 246 at 269-270:

‘[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses, where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court

²⁹ [2014] UKPC 21 at para. 12, pg. 423.

³⁰ In Re B (a child) care order: proportionality: criterion for review) [2013] UKSC33, [2013] 3 ALL E.R. 929, [2013] 1 WLR 1911 at para. 53.

³¹ [2014] UKPC 21 at para. 13, pg. 424.

is in just as good a position as the trial judge to make the decision.”³²

- [50] The referenced well-established legal principles are the standards by which appellate courts assess challenges to a lower court’s fact finding. It bears repeating that an appellant seeking a reversal of such findings faces a monumental hurdle, which can be overcome only by demonstrating that the trial judge’s ruling is unsafe due to a significant error made in assessing the evidence, be it by overlooking or discounting critical material, applying the wrong legal principles to its evaluation of the evidence or for some other substantial reason. I can do no better than apply them in the instant case.
- [51] Did the learned judge make such a fundamental error when she concluded that Ms. Joseph’s several assertions about defects in Computron’s root of title were speculative, and that except for the land adjudication record which revealed that Mr. Phillip acquired his title by inheritance, there was no evidence as to what happened in respect of the disputed land before the Land Adjudication process? Did the evidence before the court reasonably support such a conclusion?
- [52] Essentially, Ms. Joseph contended that Computron’s root of title was null and void and defective on several scores. Firstly, that Sephanise Joseph never owned the disputed land, could not devise it to anyone by Will; that the Will and Probate of it were consequently null, void and defective as were the vesting deed and vesting assent transferring the testamentary gift of the land to Mr. Phillip and Dan Placide.
- [53] Ms. Alphonse was the only witness to address these matters. Her account must be scrutinised further to assess whether the court was supplied with adequate or any evidence by which it could safely find on a balance of probabilities that Computron’s root of title was a relevant issue; or that the impugned Will, Probate, vesting deed, vesting assent and/or transfer were defective, null and void and vitiated

³² Ibid at para. 17.

Computron's root of title. This analysis is necessary to determine whether the learned judge made a finding that no reasonable judge could have made.

[54] On these matters, Ms. Alphonse's evidence in chief is set out in paragraphs 7 and 11 of her witness statement.³³She averred: -

"7. ... I am also informed and believe that that Computron Limited may not possess good title to the land as I do not now Mr. Stephen Labelle to have ever sold his land or bequeath his land to anyone."³⁴ (Emphasis added)

[55] Under cross-examination Ms. Alphonse was asked about the above statement in paragraph 7 of her witness statement. The transcript records the following exchange: -

"Q. Okay. So you are telling us that Mr. Darcheville does not have good title to parcel 284; is that correct? Does he have good title or bad title or no title.

A. At – I don't, I don't really know."³⁵

[56] Paragraph 11 of her witness statement reads: -

"I am also informed and believe that Mr. Darcheville and Computron Limited do not have good title to the property for the following reasons stated in paragraphs 2 (a) (b) (c) (d) (e) and (f) 3,6,7,8,9 of my Defence and for reasons stated in my Counterclaim. In particular because of the following:

(a) The root of the purported title to Parcel Number 0849D 284, as alleged by Computron is defective and in the circumstances Computron cannot be the holder of Parcel Number 0849D 284. The Deed of Sale registered as Instrument Number 71/2008 for the purported purchase by Computron of Parcel Number 0849D 284 is null and void as the lands upon which the house owned and occupied by Adelaide Joseph is located upon and form part of the 7/12 share in and to one carre of land which Dame Leonise Cassius Joseph born Nazaire Jean Lubin sold to Stephen Etienne Labelle on the 1st September 1920 as evidenced by Deed of Sale registered on the 3rd September 1920 in Volume 74 Number 40959. The 7/12 share in and to one carre is equivalent to 1.86 acres. The said Deed of Sale is exhibited hereto and marked [B.A.1].

³³ Filed on February 12th, 2018.

³⁴ Last sentence in para. 7 of her witness statement (EP 16 of the Record of Appeal).

³⁵ EP 277, lines 2 – 4.

- (b) The gift at paragraph 3 of the Last Will and Testament of Sepahnise Joseph must fail as the property referred to therein is not the property of Sephanise Joseph given the sale of the house and the land to Stephen Etienne Labelle on the 1st September 1920 as evidenced in the Deed of Sale referred to as (a) above. Accordingly the Grant of Probate of the Last will and Testament of the deceased Testatrix Sephanise (sic) Joseph insofar as it refers to the property sold to Stephen Etienne Labelle on the 1st September 1920 is null and void as Sephanise Joseph never at any time during her lifetime acquired property from the lawful proprietor Stephen Etienne Labelle who owned the property in his sole and absolute name and did not hold it in community with his wife Agnes Labelle. A copy of the Last Will and Testament of Sepahnise (sic) Joseph dated the 28th November 1980 is exhibited hereto and marked [B.A. 4].
- (c) The reference and inclusion of the property sold to Stephen Etienne Labelle on the 1st September 1920 in the Vesting Deed and vesting assent in favour of Dan Placide and Gilbert Phillip and executed before Sir Keith Gordon Notary Royal on the 21st day of April 1987 and registered in the Office of Deeds and Mortgages on the 28th day of April 1987 in Volume 140A Number 157578 is also null, void and of no effect. A copy of the said Vesting Deed and vesting assent in favour of Dan Placide and Gilbert Phillip dated 21st April 1987 is exhibited hereto and marked [B.A.5].
- (d) Accordingly, the Deed of Sale registered as Instrument Number 71 of 2008 and made between Computron Limited and Gilbert Phillip, purporting to transfer Parcel number 0849D 284 to Computron in null and void and of no effect.”³⁶ (Emphasis added)

[57] She was referred to paragraph 11 (a) of her witness statement and asked, ‘... the root of the purported title to parcel 0849D 284 as alleged by Computron is defective and in the circumstances, Computron cannot be the holder of Parcel Number 0849D 284; do you see this sentence?’ She answered ‘yes’. She was then asked, ‘Okay. And, you are also saying that the Deed of Sale registered as Instrument Number 71 of 2008, for the purported purchase by Computron of this parcel is null and void?’ She replied ‘Correct.’

³⁶ EP 18 of the Record of Appeal.

[58] Ms. Alphonse maintained under cross-examination that Computron's title is defective based on her belief articulated in paragraph 11 of her witness statement. Importantly, the transcript records an exchange between the learned judge and Ms. Joseph's counsel on the repeated use of the term 'informed and believed' in her witness statement. The learned judge interjected: -

"... if you are going to tell me that she is informed and verily believed, it has to be by somebody... and that is not there. ... and it's unfortunate because these Witness Statements is what I alone have to go by. ... It doesn't say who informed her."³⁷

Those pronouncements by the learned judge shed light on her thinking in respect of Ms. Alphonse's averments of being informed and her belief about information she received from some un-named person(s). It also provides insight from which certain inferences may be drawn as to the learned judge's treatment of that evidence.

[59] It is trite that a witness statement 'must not include matters of information or belief which, ... where admissible' do not state the source of the matters of information or belief.³⁸ The rationale is obvious and common sensical. Firstly, matters of information from third parties generally contain hearsay material. It must be noted that while hearsay is admissible, the weight attached to such evidence depends on the circumstances under which it arose and is admitted.

[60] Secondly, unless the source is identified, the opposing party is deprived of information which would enable him or her to investigate the source of the information and may, in the absence of appropriate controls lead to the admission of irrelevant, unreliable and inadmissible material. This would be prejudicial and unfair to the opposing party and be contrary to the overriding imperative of the pursuit of justice if not treated with caution. Thirdly, evidence adduced based on information received through unidentified sources diminishes its probative value and elevates the prejudicial effect.³⁹ It is evident that the learned judge had these factors in contemplation when

³⁷ EP 128 lines 16-17, 19, EP 129 lines 9-10 and 21.

³⁸ CPR 29.5 (1) (e); see also ANUHCVP2006/014 Rowan Bailey v Ferdinand Carty et al.

³⁹ Evidence Act Cap. 4:15 of the Laws of Saint Lucia Revised Edition parts 3 and 4, sections 114, 138 and 139.

she made the referenced observations during the trial. She would likely have borne the underlying law and its objectives in mind as she arrived at her decision. This undoubtedly informed her conclusion that there was 'no evidence of what transpired'.

[61] Looking at Ms. Alphonse's account critically, except for her saying that she was informed and believes that Computron's root of title is defective based on what she was told, I observe that she provided no substantive factual bases and alluded to no legal justification why the information she received and believes amounts to reasonable grounds for invalidating the transfer to Computron. Not only did she not disclose who gave her the information, she stopped short of saying that Computron's title is defective. On the contrary, in her response under cross-examination she admitted that she did not know if the title was defective. Incredibly, she averred merely that it may be defective based on what she was told by the unidentified person(s).

[62] The learned trial judge's conclusion that there is no evidence on which to find that the root of title is defective and that the assertions by Ms. Alphonse are speculative are most reasonable in light of the state of Ms. Alphonse's testimony. The quality of the evidence was impaired by the lack of critical details and her obvious conjecture. It is clear that the learned judge did not misunderstand this testimony or the documentary evidence. She had the benefit of hearing and observing the witnesses testify and demonstrated that she addressed her mind to the applicable rules of court in evaluating Ms. Joseph's claims of defect in Computron's root of title. Her findings of fact are commensurate with the evidence and the weight that she reasonably ascribed to it.

[63] For those reasons, I agree with the learned judge's findings and am of the considered opinion that there was no evidence on which she could have reasonably found that Computron's root of title, Sephanise Joseph's Will, Probate and the impugned vesting deed and vesting assent were defective. In my opinion, the lack of credible, relevant and probative evidence supports the learned judge's finding that those

assertions by Ms. Joseph were speculative. Her determination on this point was one that a reasonable judge was entitled to make in all the circumstances. I would not interfere with those findings of fact. I would dismiss grounds of appeal 1, 3, 5, 6 and 8 and the first ground of appeal numbered 7.

Issue 2 - Prescriptive title

- [64] Another criticism of the learned judge's decision is that she made a mistake by finding as a fact that Ms. Joseph did not possess the disputed land for the requisite 30-year period and therefore did not acquire prescriptive title to it.⁴⁰ In similar vein, her finding of law that prescription was interrupted by first registration was also appealed.⁴¹ Those complaints raise a mixed question of fact and law on the same issue. They will be addressed together.
- [65] In addition to submissions made in respect of the other impugned findings of facts, learned counsel Ms. Da Breo argued that the learned judge did not take into account that Ms. Joseph was living on the disputed land for over 75 years while all of the transactions involving the house and lands were being executed and also during the trial. She contended that in deciding whether the findings of fact should be overturned, this Court must consider those facts.
- [66] As to whether the learned judge erred in law, learned counsel Ms. Da Breo submitted that the decision in **Moses Joseph et al v Alicia Francois; St. Torrence Matty et al v Alicia Francois**⁴² is not authority for the proposition that registration interrupts prescription, as the learned judge found. She contended that **Moses Joseph** is specific to its facts and does not establish a principle. She submitted further that the case of **Sylvina Louisien v Joachim Rodney Jacob**⁴³ does not deal with prescription being interrupted by first registration under the LRPT. On that latter point she is correct.

⁴⁰ This ground of appeal was also numbered 7, the second of two with that number.

⁴¹ Ground of appeal number 10.

⁴² SLUHCv2011/0025; SLUHCv2012/0037 (delivered 21st August 2015, unreported).

⁴³ [2009] UKPC 3.

- [67] Before this Court, learned counsel Ms. Da Breo introduced for the first time, allegations of fraud and mistake, pursuant to section 98 of the LRA. She acknowledged that neither mistake nor fraud was pleaded. She nonetheless insisted that she could rely on them. As to mistake, she cited **Drane v Evangelou and others**⁴⁴ submitting that in that case, it was held that trespass need not be specifically pleaded as it was sufficient for the pleader to plead the material facts. She submitted further that the principle may be transposed to the instant case.
- [68] She contended that in the case at bar, mistake and fraud arose from Gilbert Phillip's claim to the disputed land under the LRPT based on Sephanise Joseph's Will which purported to gift the disputed land to Dan Placide. She argued that those allegations in the defence and counterclaim supplied adequate particulars for purposes of pleading mistake and fraud. She submitted that the case of **Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands**⁴⁵ supports her contention that rectification of the register should be ordered on the basis of fraud.
- [69] Learned counsel Ms. Francis cited **Sylvina Louisien v Joachim Rodney Jacob** and **Simone Jean Popo v John Popo et al**⁴⁶ as authorities for the proposition that the Land Adjudication process under the LAA and the LRTP created the system of first registration of title and that the adjudicator's decision is final. She submitted that Ms. Joseph did not oppose the claim under the LAA and did not appeal the adjudication officer's decision. She contended that in the circumstances, title to the disputed land would have commenced in 1987 when Gilbert Phillip successfully made a claim to the disputed land under the LRTP and was registered as owner in the Land Register. She argued that the fact of first registration was sufficient proof on which the learned trial judge could rely for purposes of establishing title. She submitted that the learned judge was right to hold that no claim to prescriptive right had been made out.

⁴⁴ [1978] 1 WLR 455.

⁴⁵ (2007) 71 WIR 156.

⁴⁶ SLUHCV2007/0502 (delivered 14th October 2010, unreported).

Mistake and fraud

- [70] Before drilling down into the issue at hand, namely prescription, I must address the submissions regarding mistake and fraud. The problem that learned counsel Ms. Da Breo faces is that by her submissions she has invited this Court essentially, to formulate causes of action grounded in mistake and fraud. She asks the Court to do so merely by reference to vague and speculative assertions in the pleadings, which neither implicitly nor expressly incorporate the essential ingredients of either cause of action. It is trite that fraud, including the fraudulent intention must be expressly pleaded, by including in the statement of case a short statement of the nature of the impropriety, falsehood or fraud alleged.⁴⁷ It must be emphasised that the court cannot consider fraud unless it is expressly pleaded. None of the factual assertions in the defence or counterclaim remotely outlines the essential features of fraud, mistake or the facts on which the appellant seeks at this late stage, to rely.⁴⁸
- [71] Suffice it to say, this Court determined in **Skelton and Others v Skelton**⁴⁹ and **Webster v Flemming**⁵⁰ that mistake for the purposes of section 98 of the LRA applies to what is commonly referred to as a 'mistake in the process of registration'. While all of the scenarios contemplated by that expression have not been exhaustively catalogued, the Board in **Louisien v Jacob**⁵¹ provided examples of the types of mistakes which would be caught by section 98 of the LRA. In this regard, the Board opined that these include errors of the kind that may be made during the adjudication process under the LAA and replicated during registration. For example, inadvertence by a member of staff of the Land Registry, resulting in the entry in the Land Register of incorrect details from the adjudication record would fall into that category. So too would serious mistakes made by a recording officer acting outside of his statutory authority, which are 'carried forward to the registration process'.

⁴⁷ Austin Martin, Executor of the Estate of Mary Edith Doreen Grason v The Attorney General of Antigua and Barbuda [2009] ECSCJ No. 347, (delivered 24th April 2009); See also Newport (Monmouth) Slipway Dry Dock and Engineering Co Ltd v Paynter (1886) 34 Ch D 88 at 94, CA, per Cotton LJ.

⁴⁸ As required by rule 8.7(1) of the CPR.

⁴⁹ (1986) 37 WIR 177.

⁵⁰ (Anguilla Civil Appeal) No. 6 of 1993.

⁵¹ At paras. 43-44.

[72] A third category of mistakes which would be regarded as having been made during the process of registration are 'obvious errors or inconsistencies' which appear on the face of the adjudication record that should put the Land Registry staff 'on enquiry as to the correctness of the record' but do not. The Board remarked that such mistakes which are replicated in the Land Registry and thereafter enforced, give effect to the defective adjudication record, and as a consequence would be caught by section 98 of the LRA and be capable of rectification. That learning was applied by this Court in the **Moses Joseph** case. It finds favour with me. I make the observation that while the referenced examples are not exhaustive, they provide guidance as to the meaning of 'mistake in the process of registration'.

[73] Being mindful of that learning, I note that Ms. Joseph did not outline facts in her pleadings which point to any such mistake. She also omitted to do so in respect of fraud. Her belated reliance on mistake and fraud at the hearing before this Court is not grounded in her defence or counterclaim or any part of her case. There is therefore no legal basis on which she may invoke either. Moreover, it is notoriously known that a litigant will not be permitted to introduce at the appellate level issues which were not before the lower court.⁵² For those reasons, learned counsel Ms. Da Breo's contentions regarding mistake and fraud, being new, cannot be entertained at this stage.

Prescription – findings of fact

[74] An examination of the judgment below reveals that the learned trial judge approached the issue of prescription in tandem with adverse possession, another avenue by which prescriptive title is pursued. She started by setting out Computron's case⁵³ and then outlining Ms. Joseph's case.⁵⁴ She summarised the testimony and evidence supplied by Ms. Alphonse and Mr. Lubrin. She was careful to record their recollection

⁵² Para. 15 of *Moses Joseph et al v Alicia Francois* SLUHCVP2011/0025 consolidated with SLUHCVP2012/0037, (delivered 21st August 2015, unreported)

⁵³ At paragraphs 2 to 6 of the judgment.

⁵⁴ Paragraphs 7 to 14 of the judgment.

of what they witnessed personally and what was communicated to them by Ms. Joseph as to her occupation of the disputed land.

[75] The learned judge noted that Ms. Joseph has been in continuous and uninterrupted occupation of her existing house on the disputed land for the 78 years of her life.⁵⁵ She observed that Mr. Lubrin and Ms. Alphonse supported this assertion by describing the location of the house in relation to 'various landmarks of antiquity' on the disputed land, including a 'shack shack' tree, Mr. Sylvester Samuel's house and a military water tank that was over 100 years old. She also took into account Mr. Darcheville's contrasting averments that Ms. Joseph told him that she was born and raised on a different parcel of land and that she owned yet another parcel that she had by then sold.

[76] The learned judge accepted Mr. Darcheville's account that he permitted Ms. Joseph to remain on the disputed land until Computron was ready to construct its commercial building. She remarked that Ms. Joseph presented no contradictory evidence on that score. She observed that Ms. Alphonse accepted that Ms. Joseph's rejection of the offer of a new house was motivated by Mr. Darcheville's refusal to paint the structure and build her an enclosed bathroom and not by any interest she had in the disputed land.

[77] The Court found that prior to the sale, when Mr. Phillip introduced Ms. Joseph to Mr. Darcheville as the intended buyer's representative and notified her of the impending sale, she did not object to the sale to Computron. The learned judge found too that Ms. Joseph adduced no evidence that the tenants on the disputed land were paying rent to her as owner. She accepted Mr. Darcheville's account that they were paying rent to Computron, the registered owner.

⁵⁵ Paragraph 8 of the judgment.

Prescription – findings on the law

- [78] The learned judge noted that in Saint Lucia, the law on prescription is governed by the **Civil Code of Saint Lucia**⁵⁶ (“the Code”) and the **Supreme Court – Prescription by 30 years (Declaration of Title) Rules** (“the Rules”).⁵⁷ She observed that the conjoint effect of Article 2103A of the Code and Article 2057 of the Rules is that title to land is prescribed by 30 years, during which the possession must be continuous, uninterrupted, peaceable, public and unequivocal. As to the position at common law, she had regard to the cases of **JA Pye (Oxford) Ltd. and others v Graham and another**⁵⁸ and **Powell v Mc Farlane**⁵⁹ in which those identical requirements were identified as emerging from analysis of the legal concepts of ‘possession’, ‘factual possession’ and ‘intention to possess’.
- [79] Relying on those authorities, the learned judge reasoned that in relation to the claim of prescription Ms. Joseph’s success depended on proof that she was in continuous and uninterrupted, peaceable, public and unequivocal possession of the disputed land for the requisite period of 30 years. She noted that Ms. Joseph would also need to establish that she exercised such possession while evincing an intention to possess the disputed land as owner, to the exclusion of all others including the true ‘paper title’ owner.
- [80] As a point of departure, the learned judge first considered whether Computron has a good title to the disputed land. She noted the successive entries of Mr. Phillip and Computron as registered owner in the Land Register, Mr. Phillip’s being the first registration after the LRTP. She traced the history surrounding the enactment and implementation of the LAA and LRA which facilitated among other things first registration of land under the LRTP. She took into consideration that the statutory scheme was designed to further the objective of indefeasibility of registered title.

⁵⁶ Cap. 4.01 Revised Laws of Saint Lucia.

⁵⁷ Cap. 2.01 Revised Laws of Saint Lucia.

⁵⁸ [2002] UKHL 30; [2003] 1 AC 419 (HL).

⁵⁹ (1978) 38 P & CR 452.

- [81] The learned judge explained this legal construct through extensive quotations from decided cases including **British American Cattle Co v Caribe Farm Industries Ltd (in receivership)**;⁶⁰ **Gibbs v Messer**⁶¹ and **Frazer v Walker**⁶² which were referred to by Morrison JA in **Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands** for the purpose of underscoring the fundamental premise that indefeasibility of title to land is the bedrock on which the Torrens System of land registration is maintained.
- [82] The accepted the learning in **Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands** that registration in the land register is the only mechanism for creating title to land (save for limited explicit exceptions stipulated in the LRA). Applying this principle to the facts before her, she concluded that the land adjudication process having been completed and the disputed land having been registered under the LRA, without any objection being made by Ms. Joseph, that the registration is final and amenable to review on the sole bases of fraud or mistake. She opined that Ms. Joseph sat on her rights during the land adjudication process and after and therefore Computron's registration as owner cannot now be impugned for any other reason.
- [83] The learned judge observed that pursuant to section 38 of the LRA, no person dealing with a registered proprietor is required to investigate the circumstances under which the proprietor or previous proprietors were registered, either by searching any register kept under the Eighteenth Book of the Civil Code or making inquiries about such acquisition. She determined that based on the principle of indefeasibility of title and in keeping with section 38 of the LRA, even if Mr. Phillip's title was defective, Computron was not required to investigate the validity of Mr. Phillip's root of title since his title arose not from any antecedents, but from the fact of his registration as owner of the disputed land. She held therefore that Computron

⁶⁰ [1998] 53 WIR 101.

⁶¹ [1891] AC 248.

⁶² [1967] 1 ALL ER 649.

as a purchaser for value acting in good faith 'acquired good and indefeasible title in the disputed land, notwithstanding any defect or infirmity in Mr. Phillip's title (if any).'

[84] In relation to the prescription claim, the learned judge noted that while Ms. Joseph has occupied the disputed land for over 70 consecutive years that was not the end of the matter, because the decision by the Eastern Caribbean Court of Appeal in the case of **Moses Joseph** affirmed that first registration interrupts prescription.

[85] She held that since Mr. Phillip was registered as owner of the disputed land on first registration on 26th September 1987, this interrupted Ms. Joseph's possession, with the result that the 30-year prescription period which applied to her claim, must be calculated from that date and not from 1939.

[86] The learned judge reasoned that if Ms. Joseph was in possession of the disputed land as proprietor, she would not have countenanced the acts of ownership carried out by Mr. Phillip, or by Mr. Darcheville on Computron's behalf, such as the sale to Computron without any accounting to her. She noted too that as owner, Computron collected rent from its tenants on the disputed land without objection from Ms. Joseph the avowed owner. The learned judge found that Ms. Joseph's claim of prescription was incompatible with the fact that she occupied the disputed land with Computron's consent.

[87] She ruled that the evidence significantly contradicted Ms. Joseph's claim that she possessed the land unequivocally as proprietor and with intention to exclude the owner and the world at large. She concluded that by her conduct Ms. Joseph implicitly acknowledged Computron as the owner of the disputed land.

[88] Ms. Joseph's defence and counterclaim is a two-pronged claim to prescriptive title which may be conveniently subsumed under the respective labels 'adverse possession' and 'prescription'. The constituent elements of prescription are outlined in Article 2057 of the Civil Code which provides: - 'For the purposes of prescription,

the possession of a person must be continuous and uninterrupted, peaceable, public unequivocal and as proprietor’.

- [89] The concept of adverse possession is well-developed. The cases of **JA Pye** and **Powell v Mc Farlane** are regarded as the foremost legal authorities which expound the governing principles. In **JA Pye**, Lord Browne-Wilkinson declared: -

‘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.”⁶³ (Emphasis mine)

- [90] In **Powell v Mc Farlane** Slade J. formulated the following definitions for the terms ‘factual possession’ and ‘intention to possess’: -

“I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so. ...

‘intention to possess’ requires “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.”⁶⁴

- [91] He explained further: -

“The courts will, ... 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.”⁶⁵ (Emphasis added)

It is immediately apparent that the definition and descriptors applicable to adverse possession find expression in the Civil Code in relation to prescription. The

⁶³ JA Pye (Oxford) Ltd. and others v Graham and another at p. 435.

⁶⁴ Ibid at p. 436.

⁶⁵ JA Pye (Oxford) Ltd. and others v Graham and another at p. 472.

similarities facilitate evaluation of the facts against those corresponding legal principles.

[92] Ms. Joseph's attack against Computron's title lays bare the question 'of what value is the title of registered owner as entered in the Land Register in Saint Lucia under the LRA?' The answer to that question lies at the heart of the dispute joined between Ms. Joseph and Computron.

[93] Based on established precedents, indefeasibility of title to land is a legal concept which conveys the idea that the registration as absolute owner of land in the Land Register kept under the LRA vests in the registered proprietor an inviolable, absolute title and ownership of the subject land subject only to the limited exceptions contained in the LRA or recorded on the title. The Board shed light on this in the case of **British American Cattle Co v Caribe Farm Industries Ltd (in receivership)** an appeal from Belize. In delivering the judgment Lord Browne-Wilkinson stated: -

"Although the details of the Torrens system vary from jurisdiction to jurisdiction, it is the common aim of all systems to ensure that someone dealing with the registered proprietor of title to the land in good faith and for value will obtain an absolute and indefeasible title, whether or not the title of the registered proprietor from whom he acquires was liable to be defeated by title paramount or some other cause.'

'The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.'⁶⁶

[94] The Board opined that the objective of preserving the assurance of indefeasibility within the Torrens Land Registration system, is advanced by limiting the matters which may erode the title of a registered proprietor to land within that system. It

⁶⁶ (1998) 53 WIR 101 at pg. 106 per Lord Browne-Wilkinson.

acknowledged that there are exceptions. These pronouncements by Lord Browne-Wilkinson apply in Saint Lucia by virtue of the LRA by which the Torrens System of Land Registration was established. Returning to the question posed earlier, the answer is bound up in the protections built into the operation of the indefeasibility principle. It is that a landowner whose title to land is registered in the Land Register created by the LRA enjoys the benefits of indefeasibility of title, which can be defeated only in the limited circumstances specified in the LRA. As indicated earlier, for present purposes, those limited circumstances are 'mistake in the process of registration' and fraud under section 98.

- [95] In light of my earlier indication that neither fraud nor mistake are issues for consideration in the instant case, it is enough to examine whether Computron had proven that it is registered under the LRA as owner of the disputed land. The extract of the Land Register which was received in evidence in the Court below suffices and in view of the principle highlighted earlier, is the only proof required of Computron's indefeasible title to the disputed land.
- [96] It is a matter of record that Ms. Joseph did not lodge a claim in respect of the disputed land during LRTP; did not appeal the decision of the land adjudication officer that her brother Mr. Phillip was the owner of the disputed land; and did not object to or lodge an appeal against the entry of his name and details in the completed adjudication record and subsequently the Land Register as owner. She did not dispute that with respect to the disputed land, Mr. Phillip's was the first registration in the Land Register in 1987 following the LRTP.
- [97] Those instances of inaction by Ms. Joseph are incapable of being cured at this stage in circumstances where she has not invoked mistake or fraud, the only two exceptions afforded by the LRA (pursuant to section 98) for challenging Computron's title. This is borne out by the pronouncements of this Court in the **Moses Joseph** case, where the court noted: -

“The intervention of the LRTP ... by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia. ...It was a holistic scheme implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia.”⁶⁷

[98] Furthermore, the decision in the **Moses Joseph** case categorically establishes the principle that first registration of title to land under the **LRA**, consequent on the land adjudication process has the effect of interrupting any period of possession for the purposes of acquiring prescriptive title, which started before or during the LRTP. It follows that once possession is interrupted by such first registration, a person seeking to acquire title by prescription or adverse possession must remain in continuous, uninterrupted, peaceable, open and unequivocal possession of the subject land for a fresh period of 30 years, commencing at some point after the date of such interruption.

[99] In this regard, as noted by the learned trial judge, the court stated in the **Moses Joseph** case: -

“[26] In having regard to the entire scheme of the LRTP it is inconceivable that the learned judge should reckon the prescription period for the purpose of defeating the claim of Jacob Fanus as commencing from some period prior to when Jacob Fanus made his claim during the LRTP from which his registered title then flowed. To argue that Jacob Fanus’ title which he himself only obtained by long possession in 1987 pursuant to the adjudication process was by that time extinguished by the appellants having prescribed against him would be nonsensical and an utter disregard for the land adjudication process where registered title could be obtained not only based on documentary title but also by possessory title. Indeed Jacob Fanus’ ‘greater title’ against which the appellants could prescribe only crystallised in 1987 as a result of the adjudication and registration in his name pursuant to the LRTP.

[27] ... Accordingly, the learned judge was right to hold that the relevant period for the purposes of prescription operating as a bar to Jacob

⁶⁷ At para. 25 of *Moses Joseph et al v Alicia Francois* SLUHCVP2011/0025 consolidated with SLUHCVP2012/0037, (delivered 21st August 2015, unreported).

Fanus' claim must be reckoned not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed."⁶⁸ (Emphasis added)

- [100] In the case at bar, Computron is in a similar position to the one in which Jacob Fanus found himself in the **Moses Joseph** case, while Ms. Joseph's fate is akin to Moses Joseph's. Applying the learning from **Moses Joseph**, it follows that any possession which Ms. Joseph exercised over the disputed land before and during the LRTP, was interrupted by Mr. Phillip's registration as owner of it on 26th September 1987. From that point, Ms. Joseph's claim to possession would be capable of accruing only from some later date.
- [101] The learned judge was quite correct in calculating that potential period of possession from the date of first registration in September 1987 up to the day that Computron served her with its the claim on 30th June 2014, (i.e. three years before the expiry of the requisite 30-year prescription period on 25th September 2017). In the premises, she cannot be faulted for finding that Ms. Joseph's possession did not satisfy the Code's 30-year pre-requisite.
- [102] Taking all of the evidence together and being mindful of the legal principles and learning outlined above, I consider that the learned trial judge's evaluation of the evidence in relation to Ms. Joseph's prescription defence and counterclaim is unassailable. As demonstrated in the preceding paragraphs, she methodically and thoroughly examined the evidence and discounted unsatisfactory evidence from Mr. Darcheville.
- [103] I agree with the learned judge's assessment that Ms. Joseph demonstrated by her inaction and seeming indifference towards Mr. Phillip, Computron and neighbouring tenants that she did not consider herself to be the owner of the disputed land and

⁶⁸ At paras. 25 and 27 of *Moses Joseph et al v Alicia Francois* SLUHC VAP2011/0025 consolidated with SLUHC VAP2012/0037, (delivered 21st August 2015, unreported).

held no interest in it. The evidence in support is overwhelming. In view of the uncontroverted evidence, the learned judge's impugned findings of fact are reasonable. There is nothing illogical or flawed in her reasoning which would justify a finding that she misdirected herself on the applicable law or otherwise arrived at an unsound conclusion in respect of any finding of fact on the issue of prescription.

[104] The learned judge demonstrated that she understood the principle of indefeasibility of title and that possession is interrupted by first registration arising from the LRTP. Her understanding and application of that principle is unimpeachable. Similarly, her finding that that in all the circumstances Ms. Joseph's possession did not fulfill the legal requirements of adverse possession or prescription is unassailable as is her determination that even if the period of possession satisfied the 30-year pre-requisite, it was equivocal and not exercised by Ms. Joseph as owner. She arrived at a conclusion that is reasonable in view of the deficits in Ms. Joseph's case and in light of the guiding legal principles with respect to prescription and adverse possession.

[105] There is abundant probative and relevant evidence on which the learned judge could reasonably have found that Ms. Joseph's possession of the disputed land was by consent from the owner Computron; and was accordingly equivocal and inadequate to satisfy the factual and legal requirements of prescription. In my opinion, there is no basis in fact or in law for disturbing her finding that Ms. Joseph was not in prescriptive possession of the disputed land, and that she had not occupied it for the relevant 30-year period. I would therefore not interfere with her findings and would dismiss these grounds of appeal.

Overriding Interest Issue

[106] This issue involves consideration of whether the learned judge made a mistake in law when she interpreted Ms. Joseph's claim for an overriding interest under section 28 (f) and (g) of the **LRA** as being predicated on prescription.⁶⁹ If she did so and if

⁶⁹ Ground of appeal 2.

her interpretation was correct, determination of the overriding interest issue is necessarily connected to her findings regarding prescriptive title and would be rendered moot by the earlier rulings.

[107] Another strand of this issue is whether the learned judge erred in law by finding that Ms. Joseph ‘could not have acquired an Overriding Interest under the LPA when there was clear evidence that (she) lived there in excess of 50 years acquiring Title by Prescription from which she could assert an Overriding interest.’⁷⁰ This statement posits that prescription was established on the evidence and applicable legal principles; and constituted an overriding interest under the LRA. I make the observation that these assertions were addressed under the prescription title issue and found wanting. It is also noteworthy that this criticism is the diametric opposite of ground of appeal 2.

[108] Learned counsel Ms. Da Breo submitted that the learned judge misconstrued Ms. Joseph’s counterclaim by failing to appreciate that her claim to title of the disputed land rested on three separate limbs – 1) prescription, 2) an overriding interest under section 28 (f) of the LRA and 3) an overriding interest under section 28 (g) of the LRA. She contended that on the pleadings, the principal question on which the parties were joined was whether the absolute title claimed by Computron was obtained subject to an overriding interest, which was acquired by Ms. Joseph, by virtue of her having lived on the disputed land for over 75 years at the invitation of her aunt and uncle. She submitted that this issue was incapable of resolution by simply deciding that registered title gave absolute title, without an examination of the proviso to section 23, which made absolute title subject to overriding interests under section 28(f) and (g).

[109] Learned counsel Ms. Da Breo argued that the learned trial judge muddled title by prescription and the effect of an interrupted prescription period (by first registration) with the issue of the rights of the person in actual occupation. She submitted that

⁷⁰ Ground of appeal 9.

because the learned judge fused prescription with rights in actual occupation, she placed no emphasis on establishing whether Ms. Joseph had acquired rights as a person in actual occupation.

- [110] Before considering whether the learned judge erred in law in arriving at her findings on prescription and overriding interest, it is imperative to ascertain if, as contended by Ms. Da Breo, the learned judge misconstrued the case that Ms. Joseph presented to the court or the legal submissions made on her behalf. In this regard, it is noteworthy that at paragraph 1 of the judgment the learned judge summarised Ms. Joseph's claim and counterclaim. She remarked: -

"The defendant claims to have acquired title to the Disputed Land by prescription, and an overriding interest in the Disputed Land by virtue of her actual occupation thereof for over seventy-three years. The defendant further challenges the claimant's title to the Disputed Land on the basis that the root of its purported title is defective."

- [111] The learned judge thereby identified prescription and overriding interest as the two elements of Ms. Joseph's defence and counterclaim. The learned judge further crystallised those in her articulation of the second issue in the case. She couched it as 'whether Ms. Joseph has acquired title to the Disputed Land by prescription and therefore has an overriding interest in the Disputed Land pursuant to section 28(f) and/or (g) of the Land Registration Act?' She thereby predicated the overriding interests under 28(f) and (g) on the prescription aspect of the case. In any event, she proceeded to first address whether Ms. Joseph acquired title by prescription, and then turned her attention to the overriding interest issues.

- [112] The learned judge set out her understanding of the submissions made by Ms. Joseph's then legal practitioner. At paragraphs 51 and 52 of the judgment she noted:

"[51] Counsel for Ms Joseph submitted that she acquired a proprietary interest in the Disputed Land arising out of a period beyond thirty (30) years of adverse possession. He submits that it is both this proprietary interest, i.e. her prescriptive rights, together with her actual occupation which would enable her to override the interest of Computron. Counsel submits that in other words, it is the defendant's

case that the defendant is entitled to her **prescriptive rights under section 28(f) of the LRA.**

[52] Sections 28(f) and (g) are distinct provisions. Section 28(f) protects as an overriding interest, specifically, rights acquired or being acquired by prescription. Section 28(g) protects as an overriding interest any proprietary right coupled with actual occupation of land. Counsel has made it clear that the proprietary interest on which Ms. Joseph relies, in relation to section 28(g), is her prescriptive right.” (Emphasis added)

In other words, the learned judge has pointed to Ms. Joseph’s counsel as the source for her interpretation of those elements of the counterclaim.

[113] The parties made no oral submissions at the end of the trial. They were invited to file and exchange written submissions. It is instructive to look at those for Ms. Joseph, to ascertain whether the learned judge mis-read or misconstrued them. The submissions⁷¹ contain several statements as to Ms. Joseph’s claim in relation to her prescription and overriding interests assertions. At paragraph 3, it was contended:

“In the Defendant’s Defence the Defendant contests the root of the purported title to Block 0849D Parcel 284 on the grounds inter alia that ... the Claimant cannot be the actual proprietor of Block 0849D Parcel 284 and because the Defendant has resided on the portion of land she now occupies since 1939 and has, in accordance with the provisions of the Land Registration Act section 28 (f) and (g) acquired an overriding interest in the property she having been in actual occupation of the land for seventy-three years and in excess of the thirty years required to gain title by prescription. The Defendant has a proprietary interest in the land stemming from her possessory rights arising out of a period of adverse possession which crystallizes her prescriptive rights.” (Emphasis added)

[114] The submissions stated further: -

“32. Paragraph (2) (a) of the Defendant’s Defence and Counterclaim states: “the Defendant has resided upon the portion of land she now occupies (THE LANDS) since 1939 and has, in accordance with the provisions of section 28 of the Land registration Act, acquired an overriding interest in THE LANDS, she having being in actual occupation of THE

⁷¹ Filed on February 4th 2019 (pgs. 139 – 158 of the appeal record).

LANDS for seventy three years and in excess of the 30 years required to gain title by prescription.”

33. It is the Defendant’s case that the Defendant has a proprietary interest in Block 0849D Parcel 284 having lived in actual and continuous occupation in her chattel house on the said land for seventy-nine (79) years and having lived on the said property and in the chattel house since she was six (6) months old.”⁷² (Emphasis added)

[115] It was argued further: -

“38. It is the Defendant’s submission that apart from her actual occupation of almost eighty (80) years she also possesses a proprietary interest in the land originating from her possessory rights arising out of a period beyond thirty (30) years of adverse possession signifying that in the events and circumstances of this case the Defendant’s legal status is in line with the UK legislation because she possesses both a proprietary interest in the land i.e. her prescriptive rights together with her actual occupation which would enable her to override the interest of the Claimant if it turns out that the Claimant does in fact own the house spot on which the chattel house of Adelaide Joseph now stands... In other words it is the Defendant’s case that the Defendant is entitled to her prescriptive rights under section (f) of the Land Registration Act Saint Lucia.

43. ... Further before the said transfer occurred the Defendant was in possession of her possessory rights arising out of a period of adverse possession together with her factual and actual occupation.”⁷³ (Underlining added)

[116] Learned counsel submitted: -

- “45. It is the Defendant’s case that the Defendant is entitled to the protection of sections 28(f) and (g) of the land Registration Act Saint Lucia for the following specific reasons:
- a. ... The Defendant has been in actual, factual and continuous possession of the house spot on which her chattel house now stands for over 79 years.
 - b. The Defendant had and still has a right subsisting in reference to the land i.e. her prescriptive rights by virtue of her adverse possession of the house spot on which her chattel house now stands.

⁷² At paras. 32 and 33 of his submissions.

⁷³ At paras. 38 and 43 of his submissions.

49. The evidence in this case as articulated shows that ... it is the Defendant who is entitled to the '*house spot on which the chattel house of Adelaide Joseph now stands*' and entitled to invoke sections 28(f) and (g) of the Land Registration Act Saint Lucia because of her proprietary interest (adverse possession of over thirty 30 years) coupled with her actual and factual occupation of the said '*house spot on which the chattel house of Adelaide Joseph now stands*' for seventy-nine (79) years, and of which occupation and interest the Claimant's Managing Director, Goddard Darcheville, was cognizant."⁷⁴

[117] Taken together, the foregoing submissions make the point repeatedly (as articulated in paragraph 2(a) of her Defence and Counterclaim) that Ms. Joseph's claim to an overriding interest is grounded in her claim to prescriptive title in the disputed land under section 28 (f) and (g) of the LRA; and that in respect of section 28(g) of the LRA it is based on her actual occupation of it for over 73 years; and similarly, that her proprietary interest claim stems from her adverse possession assertions which are inextricably linked to her avowed accrued prescriptive rights. These contentions are captured and succinctly outlined in the learned judge's analysis at paragraphs 51 and 52 of the judgment.

[118] It is evident that the learned judge did not misconstrue the submissions by Ms. Joseph in relation to her prescription defence and counterclaim or her section 28 (f) and (g) overriding interest claims. She addressed those contentions comprehensively. In my opinion, there is no merit in the appellant's submissions before this Court that the learned judge misunderstood Ms. Joseph's submissions in the court below. Having indicated earlier that the learned judge's determination on the prescription issue cannot be faulted and having dismissed it, it follows that this aspect of ground of appeal 2 must suffer the same fate.

⁷⁴ At paras. 45 and 49 of his submissions.

[119] Elsewhere in her defence, Ms. Joseph referred to her overriding interests but did not qualify the term by reference to paragraph (f) or (g) of section 28 of the **LRA**.

In her counterclaim she pleaded: -

"The Defendant has acquired, by virtue of section 28 of the Land Registration Act and her actual occupation of THE PROPERTY for over 75 years, an overriding interest in THE PROPERTY, which overriding interest supersedes the registered title to the Claimant." (Emphasis added)

[120] By this paragraph, Ms. Joseph expressly relied on her actual occupation of the disputed land to ground the overriding interest claimed under section 28 of the LRA. This is problematic for her because section 28 (g) which she purported to invoke speaks to 'the rights of a person in actual occupation of land...' and not merely the fact of occupation of the land.

[121] In **Spiricor of St Lucia Ltd v Attorney General of Saint Lucia and Another**⁷⁵ this Court pointed out that what is protected under section 28(g) are 'rights' and not the actual occupation. Byron CJ stated: -

"A careful perusal of the words of section 28(g) would indicate that the 'actual occupation' is not the protected interest. What is protected are the 'rights' of a person in actual occupation. The word 'rights' is not limited by any definition. In my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation. This has been the construction given to similar provisions in the English land registration legislation. See for example Lord Oliver of Aylmerton in *Abbey National Building Society v Cann* [1990] 1 ALL ER 1085 at page 1098:

'... it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, as it were, for the treatment of the right as an overriding interest. Nor does the additional quality of the right as an overriding interest alter the nature or the quality of the right itself. If it is an equitable right it remains an equitable right.'"⁷⁶

⁷⁵ (1997) 55 W.I.R 123.

⁷⁶ At pg. 132, per Byron CJ.

[122] Because she did not state anywhere in her counterclaim what rights if any, she was asserting under section 28(g), Ms. Joseph's counterclaim failed to engage any protection under that provision. In any case, she adduced no evidence and made no submissions to shed light on what rights if any, she claimed would have flowed from her actual occupation of the disputed land. The fact of the matter is that in her defence, Ms. Joseph pleaded prescription as the basis for her overriding interest assertions under section 28 (f) and 28 (g). Her counterclaim was devoid of a justiciable section 28(g) overriding interest claim.

[123] Ms. Joseph's attack on the learned judge's analysis and determination of the overriding interest issues is not sustainable for the foregoing reasons. In my opinion, the learned judge interpreted Ms. Joseph's case and submissions correctly and applied to the evidence the applicable legal principles. The criticisms levelled at her findings in relation to the overriding interest issues are unjustified. For those reasons I would dismiss grounds of appeal 2 and 9.

Costs Issue

[124] Learned counsel Ms. Da Breo submitted that the central issue was not ruled upon and therefore the trial was not complete. She contended that in the circumstances Ms. Joseph had an arguable case with a realistic prospect of success and therefore the costs are not justifiable. Learned counsel Ms. Francis submitted that the learned trial judge was duly guided by rule 65.5 of the **Civil Procedure Rules 2000** ("the CPR"). She added that the court took into account that the value of the claim did not exceed \$100,000.00 and should be treated as one for \$50,000.00. She argued that the learned judge's calculation of the prescribed costs was infallible.

[125] The learned judge did not explain why costs were awarded on the prescribed scale or why separate costs were ordered in respect of the claim and counterclaim. She summarised the outcome of each claim and then made the order. She stated

succinctly, “The defendant shall pay the claimant prescribed costs on the claim the sum of \$7,500.00 and on the counterclaim in the sum of \$7,500.00.”⁷⁷

[126] In answering the question whether the learned judge made an error in the award of costs, this Court must consider the relevant provisions of the CPR. It is trite that a successful party is generally entitled to costs.⁷⁸ Rule 65.5 of the CPR provides for the award of prescribed costs where fixed costs, budgeted costs or assessed costs are not applicable. Fixed costs apply to claims for a specified sum of money (including default judgments, judgments on admissions) or provisional attachment of debts.⁷⁹ Budgeted costs may be allowed on application by a party⁸⁰ and assessed costs are generally applicable to procedural or interlocutory application.

[127] Neither Computron’s claim, nor Ms. Joseph’s claim was for a specified or quantifiable sum. Therefore, the fixed costs regime would not apply. Neither party applied for a budgeted costs order and the assessed costs rules are inapplicable. It follows that the appropriate regime was the prescribed costs.

[128] CPR 65.5 (2) (b) and (3) state: -

“65.5 ... (2) The “value” of the claim, whether or not the claim is one for a specified or unspecified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant –

(b) if the claim is not for a monetary sum it is to be treated as a claim for \$50,000 unless the court makes an order under Rule 65.6(1)(a).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.” (Emphasis added)

[129] In the case at bar, there were two claims – one by Computron against Ms. Joseph and the other by Ms. Joseph against Computron (the counterclaim). Neither claim is for damages or a sum of money. Accordingly, rule 65.5(2)(b) would apply.

⁷⁷ At para. [55] 4 of the judgment.

⁷⁸ CPR 64.6(1).

⁷⁹ CPR 65.4 and Appendix A, Table 1 and 2.

⁸⁰ CPR.

Computron prevailed in both claims. Learned counsel Ms. Da Breo has advanced no legal or other reasons why the general rule of awarding costs to the successful party should not be invoked. There is nothing on the face of the record or in the law which commends a departure from the general rule in this case.

[130] Quantification of prescribed costs is purely a mathematical exercise involving use of the formula in Appendices B and C of the CPR. Appendix B provides that a claim with a value not exceeding \$100,000.00 attracts a total costs award of 15%. Appendix C reflects the percentage of prescribed costs to be allowed depending on the stage of the proceedings at which the claim is resolved. Where a case is not concluded before trial, the full amount of costs is to be awarded, unless the court orders otherwise.

[131] Based on the foregoing, each of the two claims in this case attracted prescribed costs equivalent to 15% of \$50,000.00 - a figure of \$7,500.00. In the premises, the appellant's complaint that the learned judge made a mistake in making the costs award is not sustainable. There is no merit to that ground of appeal and I would dismiss it.

[132] For the foregoing reasons, I would dismiss the appeal in its entirety and order that the appellant to bears the respondent's costs on this appeal.

Disposition

[133] I would make the following orders:

- (1) The appeal against the judgment of Cenac-Phulgence J dated May 9th 2019 is dismissed and the judgment is affirmed.

- (2) The appellant shall pay to the respondent costs on this appeal of no more than two-thirds of the prescribed costs awarded in the court below.

I concur.
Dame Janice M. Pereira, DBE
Chief Justice

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar