

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0081

BETWEEN

DONNESSIA SANDY

(by her lawful attorney on record **STEPHEN SANDY**)

FIRST CLAIMANT

YANNIC SANDY

(by his lawful attorney on record **STEPHEN SANDY**)

SECOND CLAIMANT

AND

RAWLE OLLIVIERRE

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Mr. Roderick Jones for the claimant.

Mr. Michael Wyllie and Ms. Vynnette Frederick for the defendant.

2020: Dec.15 & 17

2021: Feb. 24

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case concerns competing claims of trespass on and right to possession of land situated at Southwood in the State of Saint Vincent and the Grenadines ('the property'¹). On the one hand, brother and sister Donnessia and Yannic Sandy maintain that they bought the property from one Joseph George in 2016 and are the rightful owners. They allege that Mr. Ollivierre has trespassed on the property. On the other hand, Mr. Rawle Ollivierre who lives on the property, insists that he went into occupation in 1988 with permission of the then owner Ms. Vernie George. He averred

¹Also referred to at times as the 'subject land' or 'disputed land'.

that after her death in 1993, he remained in possession and has since enjoyed exclusive and undisturbed occupation of the property. He claimed that he is the owner of the disputed land and is entitled to a declaration of possessory title.

[2] The Sandys brought this claim² through their lawful attorney on record Mr. Stephen Sandy. They aver that Mr. Ollivierre has recognized Vernie George and her successors in title (including her son Joseph George) as the owners of the subject land throughout his occupation of the parcel. They charge that he is a trespasser. They seek an order for possession of the said land; an injunction to restrain Mr. Ollivierre from trespassing and costs.

[3] Mr. Ollivierre has denied that he ever acknowledged Mr. Joseph George as owner of the subject land. He contended that any paper title or other proprietary interests have been extinguished by his continuous exclusive and undisturbed occupation of the disputed land for over 28 years. He complained that Stephen Sandy entered onto the property in 2016 and started cultivating it. He counterclaimed³ for a declaration that he is entitled to apply for possessory title; an injunction to restrain the Sandys from trespassing on the land; damages from Stephen Sandy for trespass; cancellation of Deed No. 848 of 2016 and costs. The Sandys have established their claim against Mr. Ollivierre. He has not made out his case against them. His counterclaim is dismissed.

ISSUES

[4] The issues are:

- 1) Whether Rawle Ollivierre has trespassed on the subject land?
- 2) Whether Rawle Ollivierre has established adverse possession of the subject land?
- 3) To what remedies are Donnassia Sandy and Yannic Sandy or Rawle Ollivierre entitled?

LAW AND ANALYSIS

Issue 1 – Has Rawle Ollivierre trespassed on the subject land?

[5] It is common ground among the parties that the subject land was owned by Ms. Vernie George, the mother of Joseph George. The only documentary basis for this averment and concession is a Statutory Declaration executed by Ms. Vernie George on 3rd November 1988 and registered

² By Fixed Date Claim Form filed on 9th June 2017.

³ Counterclaim filed on 12th July 2017.

pursuant to the **Registration of Documents Act**⁴. In it, she declared that she assumed possession of the subject land in 1964, has been in 'total and absolute possession and control ... continuously and without interruption disturbance and molestation from anyone'. She declared further that she did not pay rent to anyone throughout her long tenure, was not accountable to anyone with regard to the subject land and had sole use and exclusive benefits to the interest in it.

- [6] She concluded that she believed that by virtue of her long tenure 'the rights of anyone claiming a superior title have been barred and extinguished by virtue of the Provisions of the Real Property Limitation Act Chapter 86 of the 1926 Revised Laws of Saint Vincent and the Grenadines.' Although the parties accepted this Statutory Declaration as proof of Ms. Vernie George's ownership of the land, it does not constitute legal title to the subject land. The Court of Appeal has pronounced on the effect of such a Statutory Declaration as to ownership of land. In the case of **Lorenze A.D. Williams Executor of the Estate of Egerton Richards (deceased) et al v Hestina Edwards Administratrix of the Estate of Clara Edwards (deceased)** Byron CJ remarked:

'The effect of the statutory declaration is to evidence in a permanent form, the possession claimed by the declarant. It does not constitute a deed of title or proof of ownership.'⁵

- [7] The Court of Appeal also approved the statement by Alleyne J. in the case of **Gordon Charles v Claire Holas** that:

'A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land.'⁶

Byron C.J. opined that in the case before the panel, the evidential value of the Statutory Declaration was high as it 'provided clear evidence that it was the intention of the declarant to be in possession as owner.'⁷ The parties in this case clearly view the Statutory Declaration as proof of ownership in relation to Vernie George's 'control' of the property. This court considers it to be

⁴Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

⁵ SVGHC VAP2000/0020 at para. 6.

⁶ Grenada Civil Suit No. 151 of 1996.

⁷ Para. 7 of the Lorenze A. D. Williams case.

merely a formal indication to the world at large by Ms. Vernie George⁸ of her intention to possess and own the land.

- [8] Be that as it may, Mr. and Ms. Sandy contended that Mr. Joseph George replaced his mother as owner of the subject property after her death by virtue of his appointment as Administrator of her estate and by reason that he was her sole beneficiary. They produced⁹Deed of Assent No. 832 of 2002 by which he purported to transfer title of the subject land to himself as sole beneficiary of his mother's estate. Although it was signed by Mr. George on 6th December 1995, it was not registered until 7th March 2002. It recited that he was granted Letters of Administration¹⁰for her estate in 1995.
- [9] The Sandyspleaded that they jointly purchased the disputed land from Mr. Joseph George. They gave no oral testimony. Mr. Stephen Sandy testifiedon their behalf. He stated that he grew up and lives in Southwood close to the disputed land. He asserted that he bought the subject land from Joseph George for his grandchildren Donnessia and Yannic Sandy who reside in the United States of America. In his witness statement which was admitted as his evidence in chief, Mr. Sandy asserted that the sale was completed on March 31st, 2016 and the land duly registered by Deed of Conveyance No. 848 of 2016 in his grandchildren's names. The Deed reflects that it was made on March 30th and not the 31st. It is evident that Mr. Sandy made a mistake regarding the date.
- [10] Mrs. Sylvia George tendered a copy of the Deed. It names Donnessia Sandy and Yannic Sandy as purchasersand Joseph George as vendorof 14,355 sq. ft of land situated at Southwood in the Parish of Saint George, as depicted on survey planG33/117, dated 22nd February 2002 and approved and lodged at the Lands and Survey Department. During cross-examinationMr. Sandy recalled buying the land in 2006 or 2008or around that time. On its face, the Deed rehearsed that the sale was made on 30th March 2016 and the Deed registered on that date. Mrs. George testified that the sale was conducted in 2016. Mr. Sandy is either mistaken about or may have forgotten the date. I accept the date in the Deed as the date of the transaction described in it.

⁸ The Registration of Documents Act, Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 5 (3).

⁹Through their witness Sylvia George.

¹⁰ No. 39 of 1995.

[11] The Deed detailed that Joseph George as Administrator of the Estate of Vernie George by Deed of Indenture No. 832 of 2002, conveyed the subject property to himself¹¹ 'for an estate fee simple absolute in possession free from encumbrances'. It contained no other specifics as to the root of Mr. George's title to the land. Nevertheless, it recited that he had agreed to sell the subject property to Donessia Sandy and Yannic Sandy for the sum of \$36,000.00 and purported to transfer fee simple absolute title to them as tenants in common. The Sandys rely on this Deed to prove that they own the subject land.

[12] The legal reality is that Mr. Joseph George could convey to them no greater interest, right and title to the property than he owned. In this regard, **The Registration of Documents Act** provides that every deed registered pursuant to its provisions:

'... shall on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying ... or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate.'¹²

It follows that just like Ms. Vernie George, Mr. Joseph George had no legal estate to the subject land because his 'interest' in the property could not be greater than Ms. George's.

[13] Mrs. Sylvia George played a supporting role in the Sandys claim. She supplied background to their claim to ownership and their version of the history of the alleged ownership by Vernie George and Joseph George. She also provided particulars about the purported sale of the disputed land. She is Joseph George's wife. She described him as the immediate past owner of the lands. She testified that after they got married in 1973, they lived initially with her mother-in-law Vernie George at Junction. They have since moved to Questelles.

[14] She explained that Ms. Vernie George became owner of the subject lands by virtue of Declaration of

Possessory Title No. 13 of 1989. She exhibited a copy of a Statutory Declaration by which Vernie George declared herself by virtue of long tenure to be the owner of:

¹¹ In his personal capacity.

¹²Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 5(1).

'All that lot piece or parcel of land situate at Southwood ... being one lot abutted and bounded on the North by a 4 foot road and on the South by lands of the heirs of Julia Sheen and on the East by a road and on the West by lands in the possession of the heirs of Vernon Punnett ...'

It is worth noting that the particulars of the land in the Schedule to the Deed of Assent mirror the description of the land in the Statutory Declaration.

- [15] Mrs. George testified that she was present sometime in the 1980's when Mr. Ollivierre visited Vernie George's residence and asked her for permission to plant crops on the contentious parcel of land and to erect a wooden house there. She could not remember the exact year when this conversation took place and when Mr. Ollivierre went into occupation of the subject land. She stated that Mrs. George gave him permission but warned him specifically that she will allow him to stay there only until she is ready for the land. She recalled that Mr. Ollivierre gave her the assurance that he would move willingly when she was ready for the land. Mr. Ollivierre denied that such a promise was extracted from him or that he ever made it. Mrs. George was unable to say when Mr. Ollivierre built his house on the land. She recalled first seeing it in the 80s.
- [16] Mrs. George stated that in the beginning of his occupation and for about 4 years, Mr. Ollivierre worked 'just a little piece' of the disputed land and brought them some of the produce from his farming. She asserted that he stopped doing so after some time. She was adamant he worked only a part of the land that was closest to his house and just for a few years. She insisted that he never cultivated the entire parcel which she estimated to be almost an acre. She stated that Mr. Sandy had to take a saw and cut down trees when he bought the property. She maintained that all of the land was 'in bush'.
- [17] When questioned about which part of the land Mr. Ollivierre cultivated, Mrs. George replied that it was the best piece of the land because it is near to the road. She indicated that the portion left uncultivated was about one lot. She averred that Mr. Ollivierre never cultivated any part of the land below his house. She said that there were a number of fruit trees on the property including mango, breadfruit, avocado and coconut trees towards the bottom of the subject land. She was asked specifically about the location of the trees on the land. She said that the avocado tree is located

just below Mr. Ollivierre's house towards the top of the land, one of the breadfruit trees and the coconut tree were below his house and towards the middle of the land, that the mango tree was growing at the bottom of the land while the coconut tree was located close to the breadfruit tree.

[18] Mr. Ollivierre was adamant that he farmed the entire parcel and not just one part of land. He accepted however that he did not cultivate all of the land in 2016. He was asked when he last planted anything there and he replied that he did so in 2019.

[19] Mrs. George stated that the only trees which are now on the property close to Mr. Ollivierre's house might be plantain trees. She stated that those would have been planted before Mr. Ollivierre went into occupation. She explained that about 4 different people were working the land before him. She averred that her mother-in-law wrote Mr. Ollivierre several letters long before she died giving him notice to leave. She claimed that he made excuse and denied getting the letters.

[20] She testified that after Ms. George's death, Mr. Joseph George applied for a deed for the land and consequently, Deed of Assent No. 832 of 2002 was executed by which the subject property was transferred from his mother's estate to him. Mrs. George stated that her husband wrote to Mr. Ollivierre and demanded that he vacate the property. She said that about 5 letters were delivered by the bailiff. She remarked 'He own some and he ain't own some.' She averred that he refused to leave. Mrs. George said that more letters were sent to Mr. Ollivierre from their lawyer between 1995 and 2016, demanding that he vacate the property. She stated that he ignored them and kept saying that he knows his rights.

[21] She recounted that in 2016 she visited the land with one Mr. Lewis, a real estate agent to have the land surveyed for sale. For his part, Mr. Ollivierre testified that Mr. George sent someone to survey the land in 2002. This date corresponds with the details of the survey referenced in the Schedule to Deed No. 848 of 2016. It records 22nd February 2002 as the date that the referenced survey plan was approved and lodged at the Lands and Survey Department. I accept that the survey was conducted at that time.

[22] Mrs. George stated that she and her husband gave Mr. Ollivierre first preference to purchase the land, but he did not accept the offer. She explained that thereafter her husband sold the property to

Mr. Sandy. She admitted that her husband did not write to Mr. Ollivierre to notify him that the property was being sold. She claimed that she has paid all property taxes each year up to the time of sale. Mr. Ollivierre did not dispute this. It is therefore probative of that assertion.

[23] Mrs. George asserted that her family went onto the land regularly and continuously right up to 2016, to pick fruits including avocado, breadfruit and mangoes. She remarked, 'we didn't leave up the land'. She insisted that Mr. Ollivierre had 'no access over the land with no fruit'. She recalled that many times they went there and he was not at home. She indicated that she did not see any goats, sheep or other animals on the land when she visited. She acknowledged that neither she nor her husband cultivated any portion of the disputed land.

[24] Mr. Ollivierre admitted that while he was not present when the Georges and their family members visited the land and he never saw them pick fruits there, he was aware that they were visiting the land up to 2016 because somebody would tell him that 'the owner or people for the land or Joe George came there'. He explained that when they came and he was not around, he would find out when he got home. In answer to a question in cross-examination, he responded that even in 2016 he knew that they were the people for the land, he having lived there for so many years. This is telling.

[25] He indicated that he saw them when they accompanied a surveyor to survey the land in 2002 and when Mrs. George brought a court matter to him - a letter from a lawyer to leave the land. He admitted that the Georges did not ask for or obtain his permission to visit the land at any time. When asked if he stopped them, he replied that he was not around and could not stop them if he is not around. He testified that someone came and surveyed the land in or about 2007. He said that he did not know who sent them to survey the land and then conceded that he had stated earlier that Mr. George sent somebody to survey the land. He accepted that the surveyor did not get his permission and that he did not try to stop him from surveying the property.

[26] Mr. Stephen Sandy acknowledged that Rawle Ollivierre lives on a part of the disputed land. He stated however that he could not remember when he began living there and did not know under what terms and circumstances he started doing so. He said that he did not ask Mr. Ollivierre about that. He acknowledged that the house on the property was not included in the contract and said that he intended to let Mr. Ollivierre take it off the property. He testified that after the purchase was

completed he asked Mr. Ollivierre to vacate the land and he refused. He admitted that Mr. Ollivierre has not paid any rent to him. He said that he asked him if he wanted to rent the land and he replied that the land is his.

[27] Mr. Sandy explained that the lawyer who handled the legal aspect of the sale for him was Mr. Carlyle Dougan. He said that he arranged for Mr. Dougan to notify Mr. Ollivierre of the sale. He recounted that Mr. Dougan visited Mr. Ollivierre, advised him that the land was sold and told him to leave. Mr. Sandy reported that Mr. Ollivierre told Mr. Dougan that he would vacate the premises but never did. He averred that Mr. Dougan went there about 4 times with the same result. He testified that he later went to Mr. Ollivierre with a bailiff at which stage Mr. Ollivierre replied that he was not leaving. Mr. Sandy said that it was after he received that response that this claim was filed.

[28] He asserted that after purchasing the property in 2016 he went into occupation. He recalled that it was not under cultivation at the time. He observed that the subject land was overgrown with grass and small trees. He said 'the whole land was there in grass and small tree'. He averred that he entered onto the property, took a saw chain saw, cut down a coconut tree that was on it and cleared the land of bushes.

[29] Mr. Sandy explained that he planted ground nuts, potatoes and eddoes on the property. He averred that he also arranged for someone else to cultivate the land. He testified that pursuant to that arrangement 3 annual crops were farmed on the land from 2016 to about 2018, namely potato vines, dasheen, tannia and ground nuts. He said that after the third year the guy who was doing the farming left it. He claimed that he never met Mr. Ollivierre working the land.

[30] He was asked to describe the location of the fruit trees that were growing on the land. He indicated that the coconut tree that he cut down was at the bottom of the land near to a mango tree and a breadfruit tree. He asserted that there were trees growing on the property except in the centre. He testified that there were also trees in the corner of the land. He indicated that there were mango and breadfruit trees.

[31] Mr. Ollivierre did not remember when the land was sold in 2016. He explained that he did not get anything concerning the sale. He remembered becoming aware of the sale only after it was

concluded and when Mr. Stephen Sandy came to him. He recalled that Mr. Sandy started cleaning up the land after he bought it, and that he cut down bushes on the land and one of the trees. He testified that afterwards Mr. Sandy's nephew farmed the land. He insisted that the nephew planted crops only on one occasion and did not do so in 2018. He averred that Mr. Sandy did not cultivate 'the whole place' in 2016 but only about half of it.

[32] He asserted that Mr. Sandy last ploughed the land in 2016. Mr. Ollivierre acknowledged that Mr. Sandy did not obtain his permission to plough the land. He admitted that he did not try to stop him from doing so. Under cross-examination he responded that Mr. Sandy said he bought the land and he believed him when he said so.

[33] He explained how he came to be occupying the land. He indicated that he always knew the lands to belong to Ms. Vernie George and that was why he sought her permission to work the land and to build a small house on it. He averred that he asked her to rent him the land and she responded that she was not renting. Mrs. George accepted that Mr. Ollivierre never paid her mother-in-law any rent for his occupation of the property.

[34] Mr. Ollivierre explained that Ms. George allowed him to build and reside in a two-bedroom wall and board house on the property and to occupy the land in exchange for clearing and cultivating it and sharing with Ms. George, the proceeds of sale from any crops farmed on the lands. He averred that as agreed he cleared the land, built his home, lived there and shared the profits from sale of his produce on a 50%/50% basis with Ms. George until her death.

[35] This assertion that there was exchange of profits for use of the land was not put to Mrs. George and she was not questioned about it. Under cross-examination she readily agreed that Mr. Ollivierre shared his produce with Ms. George and she accepted that he did. His failure to advance under cross-examination his claim that he paid Ms. George part of the proceeds from sale of produce is curious. That part of his case is viewed with skepticism.

[36] He indicated that after occupying the land he used to take crops to Ms. George whenever he reaped crops from the land. He could not remember how often this happened as it was a long time

ago. He said he never met her son Joseph George when he visited Ms. George and he did not know Mr. George before 1993.

[37] Mr. Ollivierre testified that by 2002 he had been cultivating all of the land. He testified further that he

has permitted persons from the community to graze their animals on the disputed lands and from time to time to pick fruits from the trees growing there. He stated that sometime in 2002 Mr. George sent to survey the land. He recalled that after surveying the land Mr. George never visited the land again and he never heard from him. He averred that he received a letter from legal practitioners Browne and Browne around June 2014 on Mr. George's behalf, demanding that he vacate the land. He said that he considered the land to be his and that he was not answerable to anyone and he therefore did not quit. He did not remember receiving any other letters from 'them'.

[38] He claimed that Mr. Stephen Sandy once told him that the disputed lands cannot properly be sold because no one had a proper 'valuable' deed, and it was lands belonging to Punnett for distribution to the people of Southwood. He asserted that Mr. Stephen Sandy never told him that he had purchased the subject lands either for himself or for others. He averred that he was never approached by any potential buyer and no enquiry was made of him as to his proprietary or other interest in the land or as to the basis of his occupation. He stated that if he had been approached he would have told them that the land belonged to him.

[39] Mr. Ollivierre recounted that one Sunday Mr. Stephen Sandy came to his house accompanied by Justice of the Peace Mr. May. He did not remember what year it was. He said that he was surprised to learn from Mr. Sandy that he had bought the disputed lands. He stated that Mr. Sandy and Mr. May visited him to find out what was his intention. He said that he told Mr. Sandy that he bought the land without notifying him (Ollivierre) to which Mr. Sandy replied that the vendors were supposed to tell him. He stated that he told Mr. Sandy that he should put into writing whatever he wished to say to him. He stressed that he also told him that he was not leaving the property because as far as he was concerned the land belonged to him.

[40] He testified that in 2016 Mr. Stephen Sandy entered the disputed lands without his consent and began cultivating a portion of it. He insisted that Mr. Sandy thereby became a trespasser. He did not say

what, if any action he took in response. Mr. Stephen Sandy is not a party to the instant claim in his personal capacity. He acts in a representative capacity on behalf of Donnessia and Yannic Sandy. In the premises, the claim for damages from Mr. Stephen Sandy for trespass is ill-founded. It is therefore dismissed.

[41] Mr. Ollivierre averred that early in 2017 attorney at law Mr. Parnell Campbell QC invited Mr. Sandy, Mr. George's wife and him to a meeting at his office. It is not clear at whose behest the meeting was convened. Mr. Ollivierre stated that Mr. Campbell pointed out that he (Ollivierre) was living on the land for 27 or 28 years. He formed the impression that Mr. Campbell was trying to get them to settle the matter.

[42] Mr. Ollivierre stated that Mr. Sandy is now offering to rent the disputed lands to him but he is not interested. He insisted that he owns the land and will not pay rent for it. He claimed that when he was served with the claimform, he was in the process of applying for possessory title but did not at that time have the money to pay for the several procedural steps, such as advertisements in the newspapers.

[43] Ms. Jennifer Lavia supported Mr. Ollivierre's case. She has resided at Southwood most of her life, has known Mr. Ollivierre just as long and regards him as a friend. She said that she once lived adjacent to the main road immediately above the disputed property but moved to Sharpes in 2010. She indicated that she visits Southwood regularly. She could not say exactly when Mr. Ollivierre started occupying the subject lands but according to her it was before her eldest child's birth over 29 years ago.

[44] She said that she knew Vernie George to be the owner of the property. She admitted that she was not present when Rawle Ollivierre requested permission from her to use the land and therefore did not know what were the arrangements between them. She stated that Mr. Ollivierre continued to occupy and cultivate the disputed lands after Vernie George's death up to present time.

[45] She explained that she received some of Mr. Ollivierre's produce from the subject land and he told her to go and pick. She claimed that he has also allowed her to tie her goats there from time to time. Mrs. Lavia observed that since he started occupying it she has never seen anyone other than

Mr. Ollivierre cultivating the disputed land. She remarked that she was surprised to learn that Mr. Stephen Sandy had bought the disputed lands because she is aware that Mr. Ollivierre has occupied it for over 29 years.

[46] Under cross-examination, she stated that for a period of time Rawle Ollivierre cultivated an area of the property which is directly above his house. She recalled that he planted eddoes, tannias, potatoes, yam, peas, pumpkin, okra. She could not remember when she last noticed that he had cultivated the land. In fact, she stated that on her last visit to Southwood, she did not look at the land but went straight to her house. She said she learnt by then that Stephen Sandy had bought the land. She denied any knowledge that he had cleaned it up and cultivated it after buying it.

[47] Mrs. Lavia testified that from 2010 to present she goes to Southwood once per month. Strangely, she asserted that when she visited in 2016 she did not notice that the land looked clean because she did not look at it. In light of her testimony that her house is adjacent to and directly across the street from the property it strikes me as odd that Ms. Lavia chose not to look at the property in 2016 after learning that Mr. Sandy had bought it.

[48] She recalled that Vernie George used to visit the land. She also recollected that her son Joseph George and his wife also visited the land, but she could not remember the last time she saw them doing so. She recalled that they visited the property before 2010 but not after 2010. She could not remember if the Georges picked fruits off the trees on the property when they visited. She averred that she has not seen the Georges on the land on any occasion that she has been in Southwood since her move to Sharpes.

[49] Mr. Ollivierre's brother, Randolph Woods also testified on his behalf. He indicated that he grew up in Southwood but after he got married he moved to Richland Park in 1980 and then migrated to Trinidad and Tobago in 1981. On his return to the State in March 1989, he moved back to Southwood and noticed that his brother was living on the disputed lands in a house he built there.

[50] Mr. Woods testified that he lived with his mother in Southwood for a period before moving to Glen in

2003. He said that he was aware that his brother cultivated yams, tannias eddoes, sweet potato, peas and corn on the subject lands and shared the produce with their mother. After moving to Glen, he continued to visit Southwood and he observed that his brother continued to occupy and cultivate the disputed lands to the exclusion of all others.

[51] Hewas not able to say when last his brother cultivated the property. He stated that whenever he goes to Southwood, his brother is the only one he has seen on the property. He indicated that his lastvisit to Southwood might have been after 2014 'but it was not regular'. He could not remember the last time he visited the property. Like Mrs. Lavia he stated that he was surprised to learn that the property has been sold.

[52] Mr. Ollivierre claimed that he has enjoyed exclusive, undisturbed occupation and possession of the property since Ms. George's death in 1993. He averred that from that time he has functioned as owner of the lands, intended to so function and has been accountable to no one. He maintained that since Ms. George's demise he has never acknowledged anyone as owner or landlord and has not paid rent to anyone in respect of those lands. He was adamant that he has since acquired the right to be declared owner by virtue of his continuous, undisturbed and exclusive possession since 1993 – a period in excess of 28 years.

[53] He asserted that his occupation and possession of the land have extinguished any proprietary interests, paper title or other ownership claims against the subject land. He argued that the basis on which the sale to the Sandys took place is of no effect and that the sale is therefore void. He denied being a trespasser on the property at any time.

Meaning of Trespass

[54] The law is quite clear that a claimant does not need to establish ownership of land over which he alleges that a defendant has trespassed. He is simply required to prove that the defendant has interfered with his possession of the disputed land. This trite principle of law has been repeated in many cases in the Eastern Caribbean Supreme Court. The **Lorenze A.D. Williams case** is one such case. In delivering the judgment the learned Chief Justice remarked:

'Trespass is the interference of one's possession and it does not turn on whether the party bringing the action had a deed in law or was in fact the owner of the land, as stated at 4th edition of Halsburys Volume 45 paragraph 1394.'¹³

It follows that the determination of whether Mr. Ollivierre is a trespasser involves a finding of whether the Sandys and their predecessor in title were in possession of the subject land at the relevant times.

[55] The Sandys submitted that since the referenced Deed of Assent predates the **Possessory Titles Act**¹⁴ which is not retroactive in its application, the logical presumption is that the Statutory Declaration gave title to Vernie George in 1988 and is legally binding. As articulated earlier in this judgment Ms. George's Statutory Declaration did not confer any title to her. The Sandys argued that all deeds which flow from the Statutory Declaration, inclusive of the Deed of Assent No. 832 of 2002 are therefore legally binding. This contention is baseless having flowed from an erroneous premise.

[56] The Sandys contended further that when Vernie George gave Mr. Ollivierre permission to occupy the disputed property, he became a bare licensee and time could not possibly start to run in his favour at that time. They submitted that the learned authors of **Elements of Land Law** define a bare licensee as '...a personal permission, granted otherwise than for consideration, to enter and be present upon the land of another.'¹⁵ They argued that it stands to reason that Mr. Ollivierre continued to occupy a portion of the contentious land as a licensee up to Vernie George's passing in 1993. They did not address the status of the licence after Ms. George's death.

[57] The Sandys' submissions regarding the creation of a bare licence summarize the applicable legal principles. Mr. Ollivierre's admission that he was let into rent-free occupation of the subject land by Ms. George whom he considered to be the owner removes all doubt as to the legal basis on which he occupied the property from 1988 to 1993. As contended by the Sandys, the law recognizes such a consensual arrangement as constituting a licence.

¹³At para. 7.

¹⁴Act No. 38 of 2004, now contained in the 2009 Revised Edition of the Laws as Cap 328 of the Laws of Saint Vincent and the Grenadines.

¹⁵Gray and Gray. *Elements of Land Law*. 3rd Edition [2001] p. 139

[58] The learned authors of **Halsbury's Laws of England** describe a licence by distinguishing it from a lease. They write:

'Because a right to exclusive possession of the land is a necessary requirement for the creation of a tenancy, an agreement which merely makes an act (such as trespass) lawful that otherwise would be unlawful, and does not properly alter or transfer any estate or interest in the property to which it relates, operates as a mere licence. Since a licence does not create an interest in land, it is not binding upon a successor in title of the original grantor

unless the circumstances are such as to give rise to a constructive trust.'¹⁶

[59] They explained that such a licence is terminated in different ways including death of the licensor or licensee. They noted:

'A purely personal licence is not assignable. ... A gratuitous licence is revocable by notice at any time, and is revoked by the death of either party or by an assignment of the land over which the licence is granted.'²³

This learning signifies that the conferment of the benefit and/or obligation of the licence from Ms. Vernie George to Mr. Ollivierre created a licence. It also illustrates that the licence thereby created was not capable of being transferred to Ms. George's estate or her beneficiaries by operation of law. Mr. Ollivierre quite correctly submitted that the licence came to an end in 1993 at the time of Ms. George's death.

[60] The Sandys contended that not only are they vested with legal authority to bring a claim in trespass against Mr. Ollivierre on account of the fact that they are bona fide purchasers for value of the subject property'; but in addition, their title is protected from a claim grounded in adverse possession. They cited the case of **Judith Burgess-Hyde v Venold Coombs et al** in which Bruce-Lye J. referred to the doctrine of 'equity's darling' by stating:

'...it is a well established principle of law that if a purchaser obtains a conveyance of the legal estate at the time of his purchase and can support the plea of purchase for valuable consideration without notice, then the legal estate affords him an absolute protection.'¹⁷

¹⁶ Vol. 62 (2016) para. 6.

¹⁷ SVGHC V2003/024 (at para 20)

- [61] The Sandys submitted that Mr. Ollivierre never challenged the 2002 Deed of Assent. They reasoned that in the circumstances, they are *bona fide* purchasers for value and 'should be afforded the absolute protection of equity's darling.' It is evident that this contention by the Sandys' incorporates the misguided notion that they have obtained a valid legal title.
- [62] Mr. Ollivierre countered that Mr. Joseph George could not pass good title to the Sandys because the Statutory Declaration could not vest title to the land. He submitted that even if Mr. George secured a declaration of possessory title as Vernie George's administrator, he would have had to do so before 2005. He argued that he had by then been in sole, continuous and undisturbed possession and occupation of the disputed land and had become entitled to a declaration of possessory title.
- [63] He submitted that any right the Sandys may have acquired when they purchased the disputed land was subject to 'his rights of adverse possession'. He relied on the cases of **Republic Bank v Manichand Seepersad et al**¹⁸ and **George Charles v Gwendolyn Gittens et al**¹⁹. He highlighted the pronouncement of Mendonca JA in the former case, that the defendants acquired the land subject to encumbrances on the register. He contended further that 'the claim of bona fide purchaser for value is not a Defence to a claim in adverse possession.' He submitted that therefore their claim must fail.
- [64] Mr. Ollivierre argued that his evidence is that except for 2002 when Mr. George came to survey the land, he never saw him or his wife visiting the land and was only informed by neighbours that they had visited on a few occasions during his absence. He submitted that the decision in **Wills v Wills**²⁰ is authority for the legal proposition that occasional visits to property are insufficient to support and maintain the title of a paper owner. He submitted that the decision supports his contention that the title of the paper owner Vernie George was extinguished in 2005.

¹⁸Civil Appeal No. S268 of 2014, (Trinidad and Tobago Court of Appeal).

¹⁹ Civil Appeal No. 6 of 1991.

²⁰(2003) 64 WIR 176.

[65] Mr. Ollivierre submitted further the Privy Council held in that case that a husband had obtained adverse possession of a house in Jamaica in circumstances where the wife left him in the matrimonial home (having removed all of her personal possessions), went abroad to live and visited only occasionally. Mr. Ollivierre quoted Lord Walker of Gestinghope as saying:

‘She (wife) consulted lawyers in 1984 but she never seems to have taken action either to have the properties sold, or to arrange their ownership by an exchange of beneficial interests, or even to obtain a properly written acknowledgement of title.’²¹

[66] The Board took into consideration that her husband and his new wife had remained in continuous and undisturbed occupation and exclusive possession of the matrimonial properties and managed them exclusively in excess of 12 years without acknowledging to the former wife that she retained any interest in them. The Court noted that she had made brief visits to the matrimonial home in that time, the last occasion as a guest. The Board ruled ultimately that the former wife had thereby discontinued her possession and retained no interest in the properties. Mr. Ollivierre reasoned that similarly, in the case at bar, periodic visits to the land as alleged by Mrs. George did not disturb his exclusive possession of the land and did not interrupt time running in his favour.

[67] He argued further that service of a notice to quit is not effective to stop time running in favour of the adverse possessor. He contended that time continues to run against a paper owner who does nothing to stop time running. He submitted that in the absence of a claim by the Sandys, time for limitation purposes continues to run in his favour until he relinquishes possession or until the court makes a ruling against him and his possession is terminated.

[68] He cited in support **Mt. Carmal Ltd. v Peter Thurlow Ltd.** where Nicholls LJ opined:

‘We confess to being unable to see how the sending and receipt of that letter can have the effect of making the property cease to be in adverse possession, viz., cease to be in the possession of the Defendant as a person in whose favour the period of limitation was running. By the letter, the plaintiff asserted a claim. That is all. We do not accept that, in a case where one person is in possession of the property, and another is not, the mere sending and receipt of a letter by which delivery up of possession is demanded, can have

²¹ At page 189.

the effect in Law for limitation purposes that the recipient of the letter ceases to be in possession and the sender of the letter acquires possession.²²

[69] Mr. Ollivierre also relied on **Ramnarace v Lutchman** where Lord Millet stated:

'Services of notices to quit by the defendant thereafter without more was insufficient to stop time running in favour of the plaintiff, and accordingly the defendant's title was extinguished after a further 16 years in July 1991, that is to say before the defendant brought his action (by counterclaim) to recover the land.'²³

[70] The preceding submissions highlight three sub-issues, resolution of which are critical in arriving at a determination as to whether Mr. Ollivierre is a trespasser. Firstly, the court must consider what of asset, if any, was held by Ms. George in relation to the possessory rights she enjoyed in connection with the disputed land. Secondly, was such asset capable of passing on intestacy. Thirdly, did Mr. George enjoy such asset as administrator or beneficiary of his mother's estate. The nature of the legal relationship between Mr. Ollivierre and Ms. George when he went into possession of the subject land.

Possessory right – Real or Personal Property?

[71] It appears from the Deed of Assent that Ms. George died without leaving a Will. In those circumstances, it was necessary for her legal personal representative to extract Letters of Administration and thereafter to administer her estate. The law is that on the death of an intestate her real and personal property vests in the Honourable Chief Justice until grant of Letters of Administration is made to the person entitled.²⁴ Thereafter, the Administrator holds the intestate's real and personal estate on a trust for sale on behalf of the beneficiaries.²⁵

[72] **Megarry and Wade** explains the rationale behind this arrangement as follows:

²² [1988] WLR 1078 at page 1084.

²³ [2001] 1 WLR 1651 at page 1657.

²⁴ Administration of Estates Act, Cap. 486 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 31.

²⁵ Section 47 of the Administration of Estates Act.

'Apart from any property specifically devised or bequeathed, the personal representatives thus have whole ownership of the assets vested in them, and the rights of the beneficiaries, whether under a will or an intestacy, are protected, not by vesting in them any equitable interest in any of the assets, but by the rule that the court will control the personal representatives and ensure that the assets are duly administered in the interests of the beneficiaries and all other persons concerned. A beneficiary prospectively entitled to any such asset can thus at most be said to have a species of "floating equity" in it which may or may not crystallise. Accordingly, even a beneficiary who is solely entitled under an intestacy cannot, for the purposes of a statutory right to compensation, claim to be "entitled to an interest" in a house which forms part of an unadministered estate;'²⁶.

[73] On the facts of this case, Ms. George's estate was held in that state of abeyance until March 2nd 1995 when Mr. George received the Letters of Administration. Up to that time, the assets were vested in the Honourable Chief Justice. During that time, the Honourable Chief Justice stood in the shoes of the intestate and by operation of law, remained in possession of the subject land on behalf of the estate.

[74] As administrator of his mother's estate from March 1995, Mr. George functioned in a different capacity from that of beneficiary. Accordingly, between March 1995 and 30th March 2016 he held the possessory right attached to the subject land, not as beneficiary but as administrator *qua* trustee. Thereafter, in accordance with the law, he would hold the proceeds of the sale of any trust property in trust for the beneficiary until the estate's debts were paid and any remaining funds disbursed to the beneficiary.

[75] The foregoing explanation begs the question whether the expressions 'real and personal estate' and 'real and personal property' as used in the referenced provisions of the **Administration of Estates Act** include the right of possession enjoyed by Ms. George. The learning suggests that they do. In **Words and Phrases**²⁷ the definition of 'tenements' and 'hereditaments' illustrates that a

²⁶ At page of The Law of Property.

²⁷ Lexis Nexis Edition.

right to possession of land attaches to the land, and is capable of being passed either as real or personal property to an heir on intestacy.

[76] 'Tenements' and 'hereditaments' are there defined to mean:

'whatever can be the subject of tenure and whatever is capable of devolving upon death, whether as real property or as personal property, to personal representatives; but they are used in a general sense to include both the corporeal things, such as houses and land, and the rights which rise out of them. Where these rights extend to the exclusive possession of the thing which is the subject of property, they are called corporeal hereditaments, a term which is used to denote both the thing itself and the right of property in the thing; and, where they fall short of this, as, for example, in the case of profits à prendre, they are called incorporeal hereditaments.(62 Halsbury's Laws of England (5th Edn) (2016) para 514)²⁷(underlining supplied)

[77] The definition continued:

'Strictly the term 'corporeal' applies to the land itself, whereas rights in the land are incorporeal; but in legal usage a right in the land, if accompanied by possession, is regarded as corporeal, whereas partial rights which do not entitle the owner of them to possession are regarded as incorporeal. Rights in land, whether corporeal or incorporeal, are described by the words 'tenements' and 'hereditaments', 'tenements' meaning primarily that they are the subjects of tenure, and 'hereditaments' meaning that they were, while rules of inheritance were in force, capable of passing to the heir. 'Tenements' and 'hereditaments' are not the same in scope, and 'land' is not always restricted to land in the physical sense; it may extend to rights in the land. 'Lands, tenements and hereditaments' comprises both real estate and chattels real (leaseholds); thus although it does not include personal chattels, it formerly comprised copyholds, and it comprises chattels real as well as freeholds. ...

Any property which might, on an intestacy occurring before 1926, have devolved upon the heir of the intestate is a hereditament.(87 Halsbury's Laws of England (5th Edn) (2017) paras 8, 10)²⁷(underlining supplied)

[78] The **Administration of Estates Act** contains 2 definitions of 'real estate'. They shed further light on the concept of a possessory right as property. In section 1 the definition states:

"real estate", save as provided in Part V, means real estate, including chattels real which by virtue of Part I devolves on the personal representative of a deceased person;'

In Part 1 section 3 (1) (a) the term is defined to include:

'chattels real, and land in possession ... and every interest in or over land to which a deceased person was entitled at the time of his death;'

It is defined jointly with personal estate in Part V, section 60 as follows:

'In this Part, "real and personal estate" means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will.' (underlining added)

[79] In view of the foregoing definitions, it strikes me that the right to possession that Ms. George enjoyed amounted in law to a corporeal hereditament and is included in the definition of 'real estate' in section 3 of the **Administration of Estates Act**. This perspective is supported by the definitions of 'land' and 'personal estate' and 'personal property' in the **Limitation Act**²⁸.

[80] In the **Limitation Act**:

'land' includes corporeal hereditaments, rent charges and any legal and equitable estate or interest therein, including an interest in the proceeds of the sale of land of land held on trust for sale, but except as provided above in this definition does not include any incorporeal hereditaments;' and;

'personal estate' and 'personal property' do not include chattels real;' (underlining added)

[81] Essentially, these provisions in the **Limitation Act** characterize as real property items such as chattels real and proceeds of the sale of land which are generally considered to be personalty. It is pellucid that Parliament intended that a right to possession of land by virtue of exclusive occupation of the kind described by Ms. George in the Statutory Declaration would be deemed to be real

²⁸Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 2(1).

estate for purposes of succession under an intestacy. It follows that Ms. George's right to possession formed part of her estate.

[82] The practical application of these definitions to the undisputed facts of this case demonstrate that in law, Ms. George's real estate included the right to possess the disputed land and was initially held by the Honourable Chief Justice until 1995. In 1995, that asset became vested in Mr. George as administrator of Vernie George's estate in trust for sale for the beneficiary of the estate. In that capacity (administrator) Mr. George was under no disability in terms of exercising that right of possession.

[83] The law contemplates that even as administrator he could have converted that right to a declaration of possessory title if he so elected, pursuant to the provisions of the **Possessory Titles Act**²⁹. That Act expressly provides that an administrator of a deceased's estate or a beneficiary may apply in that capacity for a declaration of possessory title of land on the basis of adverse possession by the deceased. It is clear then that as administrator Mr. George was authorized and duty bound to assume control of the possessory right and as administrator and trustee convert it to cash for distribution to the beneficiary.

[84] Mr. Ollivierre has advanced the defence of adverse possession in answer to the charge that he is a trespasser. He submitted that he has enjoyed undisturbed and exclusive possession of the property for over 28 years. He argued that any interest that Mr. George held in the subject property was extinguished 12 years after his mother's death by virtue of the adverse possession.

[85] He referenced two of the leading authorities as to what constitutes adverse possession in law. He cited **Powell v McFarlane**³⁰, **J A Pye (Oxford) Ltd v Graham**³¹ and **Buckinghamshire County Council v Moran**³². Those cases establish that two elements must be present in order to prove adverse possession. According to Slade J. in **Powell**:

²⁹Section 3(3).

³⁰ (1977) 38 P & CR 452.

³¹ [2002] UKHL 30.

³² (1988) 86 LGR 472.

'If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what constitutes a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, 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.'³³
(Underlining supplied)

[86] By his own admission, Mr. Ollivierre represented that he did not have exclusive possession of the land for the relevant 12-year period. His admission that the Georges visited the land repeatedly for different reasons point to them exercising rights of ownership and undermines his claim of adverse possession. Clearly, his occupation of the land did not exclude the Georges' enjoyment of the land and the fruits on it. In fact, they came and went as they pleased. Moreover, Mr. Ollivierre did not have the use of the entire parcel and did not utilize it.

[87] From all accounts, the Georges used the land principally to source fruits each in their respective seasons, from the trees which they either planted or kept on the property. No evidence was led about the purpose for which the right to possession was acquired, other than for serving as a source of produce when it was under cultivation by the previous owner's licensees. I am fortified in my assessment that Mr. Ollivierre did not enjoy exclusive possession or occupation of the whole property. I find that he did not.

³³At pages 470-471.

[88] I turn now to examine the submissions made by Mr. Ollivierre as to why the letters he received from Mr. George did not stop time running. The decision in the **Mount Carmal Ltd. case** is distinguishable from the instant case because in that case the defendant was in exclusive possession of all of the property. The claimant had no access and never did. Nicholls L.J. remarked:

‘What strikes us forcefully is that nothing changed at the property when the letter was received. The defendant was living there, with exclusive occupation, before she received the letter. So she was afterwards without any break. Before receipt of the letter the property was in the possession of the defendant in whose favour the period of limitation was running. It was still in her possession after the receipt of the letter.’³⁴

[89] Lord Justice Nicholls distinguished the **Mount Carmal Ltd. case** from the case of **Ocean Estates Ltd. v Pinder**³⁵ which involved a claim for damages for trespass to 144 acres of land (in the Bahama Islands) consisting partly of a swamp and partly of poor-quality scrub land. There, the plaintiff brought action against the defendant who had carried out farming activities on the land and raised a defence of possessory title. The defendant had contended that while the plaintiffs were able to establish a sufficient documentary title to the land, they could not succeed against him in trespass because they failed to prove that they had sufficient possession over the land to maintain such an action.

[90] The Court of Appeal’s judgment was appealed to the Board. In addressing whether the plaintiff had established sufficient possession to claim damages, Lord Diplock said:

‘Put at its highest against the plaintiffs it is clear law that the slightest acts by the person having title to the land and by his predecessors in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired: see *Bristow v Cormican* (1878) 3 App Cas 641. Lord Hatherley, at p. 657 and *Wuta-Ofei v Danquah* [1961] 1 W.L.R. 1238’³⁶

³⁴ At page 1084 B.

³⁵ [1969] 2 A.C. 19.

³⁶ At page 1084 H.

[91] He reasoned:

'In the present case the plaintiffs can rely upon the entry on the land by Mr. Chipman on behalf of Chipper Orange Co. Ltd. from 1941 to 1946 and his use of it to grow fruit trees, and upon their own entries by their architect in 1957 and by their surveyor in 1959-60. In addition to being enough in themselves to establish sufficient possession to bring an action for trespass these later entries negative any intention on the part of the plaintiffs to abandon possession, having regard to the purpose, viz., that of eventual building development, for which the plaintiffs held the land.'³⁷ (Underlining added)

I make the observation that likewise in the case at bar Joseph George to an active interest in the management, occupation and of the property consistent with the purposes for which the possessory right was acquired.

[92] The Court in the **Mount Carmal Ltd. case**, noted that the only question which arose for its determination was whether 'the defendant ceased to be in possession of the property in which she was living and of which she had exclusive actual occupation in the usual way' by the mere sending by the plaintiff and the receipt by the defendant of the letter demanding that the defendant vacate the property. It concluded that the referenced remarks by Lord Diplock have no bearing on that issue. The facts in this case are patently different. Mr. George did more than just sending letters to Mr. Ollivierre. The **Mount Carmal Ltd. case** does not assist Mr. Ollivierre.

[93] Likewise, the **Ramnarace case** is quite dissimilar to the one at bar. Firstly, in that case the nature of the initial relationship between the adverse possessor was characterized as a tenancy at will with an agreement to purchase the property at a future date. No such tenancy was created in the instant case. The Board held in **Ramnarace** that the plaintiff entered onto the disputed land as a tenant at will and intending purchaser, pursuant to a family arrangement in 1974 whereby her uncle and aunt granted her exclusive rent-free possession of the disputed property until such time as she could afford to buy it.

³⁷At page 1084 H -1085 A.

[94] The Court held that the tenancy at will was determined in 1975 at the end of one year and that time immediately began to run in the plaintiff's favour resulting in the extinguishment of the title held by her cousin, the defendant who succeeded his parents to ownership after their deaths. The court held further that services of notices to quit without more was not effective to stop the time running.

[95] The Board opined further:

'Before an occupier who is in exclusive occupation of land can be treated as holding under a licence and not a tenancy there must be something in the circumstances such as a family arrangement, an act of friendship or generosity or suchlike, to negative any intention to create legal relations.'³⁸

In this case, Mr. Joseph George undertook that something more which was missing from the **Ramnarace** case. He kept going to the property and exercised his right to possession without hindrance or interruption as the owners/claimants did in the **Ocean Estates case**.

[96] Applying the principles and reasoning in the **Ocean Estates case**, I am satisfied that in Mr. Ollivierre's conduct in the instant case and in all of the surrounding circumstances can in no way be deemed to satisfy the requirements of adverse possession. Quite conceivably, Mr. Ollivierre formed the intention to own the subject property. However, his dealings with it fell short of amounting to exclusive, undisturbed possession for a continuous period of over 12 years.

[97] Although there is common ground between the parties that Mr. Ollivierre occupied the property from 1988 to 1993 with Ms. George's permission, the Sandys' position is that at no time did Mr. Ollivierre have permission to utilize, occupy or cultivate the entire parcel. On this point, I prefer Mrs. George's account over Mr. Ollivierre's and his witnesses. Mrs. George was a credible witness whose testimony withstood searching cross-examination. Her account is corroborated to some extent by Ms. Lavia who accepted that Mr. Ollivierre cultivated the portion of the land which was above his house for a period of time.

³⁸At page 1657.

[98] Mr. Ollivierre's testimony was riddled with inconsistencies and evasive responses. Throughout his pleadings, his witness statement and examination in chief he alleged that he occupied and cultivated the entire parcel of land from 1988 to the date of filing of those documents. However, under cross-examination for the first time he said that he did not work the whole parcel in 2016. On re-examination, he stated that he did not work the entire parcel only because Mr. Sandy came to him and told him that he bought the land. His admission that the property was cleared by Mr. Sandy also suggests that the land was overgrown as alleged by Mr. Sandy. I accept that it was. In that state, it could not have been under cultivation by Mr. Ollivierre as he alleged.

[99] To my mind, if Mr. Ollivierre had the entire parcel of land under cultivation continuously as he claimed, it is unlikely that the property would have been as overgrown as described by Mr. Sandy. Coupled with Ms. Lavia's evasive responses regarding her observations about happenings on the subject land during her visits to Southwood after 2016 his averments about cultivating the complete parcels suggest that they were both being less than truthful about that contention. Mr. Ollivierre's answers to whether he was present when the Georges visited the land ranged from insistence that he was never present to mumbled replies that sometimes when they visited he was not present. I do not believe him.

[100] Equally as puzzling is Mr. Ollivierre's claim that he occupied the land as owner yet took no steps to exert his rights of ownership by attempting to stop Mr. George and Mrs. George from coming repeatedly to the subject property between 1993 and 2016, or from taking a surveyor there to conduct a survey. Likewise, his failure to prevent or attempt to prevent Mr. Sandy from clearing or farming the property without his permission is inexplicable in light of his claim to be the owner.

[101] Such behaviour is not to be expected from someone who is asserting ownership rights over a parcel of land. One would expect an owner or someone claiming to be owner to defend his property from incursion by strangers and trespassers. An owner of property does not simply sit by and allow all and sundry to venture onto his land and pick fruits, survey the land, plough it, clean it up, cultivate it without putting up some resistance and forceful objection. Mr. Ollivierre's explanation that he did not stop the Georges from visiting because he was not present when they

visited, does not explain why he did not seek them out or write to them demanding that they stop trespassing.

[102] I accept Mrs. Joseph's testimony that she and her husband and family had full access to the subject lands and went there freely to reap fruits even after Mrs. George passed in 1993. I find also that from 1993 to 2016 Mr. Joseph George and Mrs. Sylvia George visited the subject property from time to time and picked fruits from the several fruit trees, thereby signaling their unwavering interest in the subject land and exercising Mr. George's possessory right over it.

[103] I do not accept Mr. Ollivierre's and his witnesses' accounts. I believe Mrs. George and Mr. Sandy. I view Mr. Ollivierre's inaction in the face of active, repeated and consistent entry onto the property by that the Georges (and after him Mr. Sandy) as acquiescence by him that they had a superior right to the property than he did and/or that he regarded them as the owners. I draw that reasonable inference from his conduct. The posture he adopted was that of a man who knew and accepted that he was on the property unlawfully. His assertions of adverse possession are not supported by the evidence and do not therefore afford a defence to the claim of trespass.

[104] I also accept Mrs. George's testimony that she and her husband sent letters to Mr. Ollivierre between 1995 and 2016 demanding that he leave the property. I find that Mr. George asserted his right of possession over the property from 1993 to 2016 by his continued visits there to pick fruits, paying the property taxes, writing the letters to demand that Mr. Ollivierre vacate and by returning there with a surveyor in 2002. Moreover, he signaled by the letters to Mr. Ollivierre that the *status quo* had changed and he was not interested in pursuing a licensor/licensee relationship with him as his mother did.

[105] While he did not cultivate the land or initiate legal action to have Mr. Ollivierre removed from the land, he and his wife continued to help themselves to engage in their usual activities on the property with Mr. Ollivierre's his knowledge and without interference from him. This establishes on a balance of probabilities that Mr. Ollivierre did not have exclusive and undisturbed possession of the subject property between 1995 and 2016. The evidence reveals that during this period, Mr. George exercised his right of possession as administrator of his deceased mother's estate.

[106] I am satisfied that Mr. Ollivierre occupied part of the property unlawfully having refused to vacate and remove his house although he was asked to do so repeatedly by Mr. George and ultimately by Mr. Sandy, agent for the Sandys. In light of all of the prevailing circumstances Mr. Ollivierre became a trespasser by remaining on the property in defiance of those legitimate requests. I find that he occupied only a portion of the disputed land from 1988 to 1993 with permission from Ms. Vernie George, and after 1995 became a trespasser.

Issue 2 – Has Rawle Ollivierre established adverse possession of the subject land?

[107] Having regard to the finding on the issue of trespass and in light of the factual findings made as to Mr. George's possession of the property between 1995 and 2006, I reject Mr. Ollivierre's assertions that he enjoyed exclusive, undisturbed possession of the subject lands between 1993 and 2016. That is inconsistent with possession by Mr. George. I find that Mr. Ollivierre acknowledged Mrs. Vernie George, Mr. Joseph George and Mr. Sandy as agent for Donnessia and Yannic Sandy respectively as the 'owners' and the persons entitled to possession of the property from 1988 through 2016 and up to present.

[108] Applying the principles from the **Powell, Pye** and **Buckinghamshire County Council** cases, I conclude that Mr. Ollivierre has failed to establish exclusive, undisturbed and continuous possession of the property for a period in excess of 12 years. His claim for a declaration of possessory title and related remedies fails.

Issue 3 – To what remedies are Donnessia Sandy and Yannic Sandy or Rawle Ollivierre entitled?

[109] The Sandys have made out their case against Mr. Ollivierre. They are entitled to have full enjoyment of their property, including vacant possession. Their prayer for an order for possession of the property is just. Rawle Ollivierre is directed to on or before 30th June 2021, quit and deliver up to Donnessia Sandy and Yannic Sandy, possession of the lands registered by Deed of Conveyance No. 848 of 2016. He shall also by even date remove or caused to be moved all structures that he has erected or caused to be erected upon the subject lands described in Deed of Conveyance No. 848 of 2016. Donnessia Sandy and Yannic Sandy are at liberty to dismantle any such structure which remains on the property after that date.

[110] The Sandys have not sought damages for trespass. None is awarded. The court may grant injunctive relief when it is satisfied that it is just to do so. Having regard to Mr. Ollivierre's persistence in denying the Georges and then the Sandys vacant possession of the subject property despite their repeated demands, I consider it just and appropriate to grant the injunction sought. Accordingly, Rawle Ollivierre is restrained from 30th June, 2021, whether by himself, his servants, agents or howsoever otherwise from remaining on or trespassing on the said property registered by Deed of Conveyance No. 848 of 2016. It is further directed that a penal notice in terms of CPR 53.3(b) is to be endorsed on the order.

[111] Mr. Ollivierre's ancillary claim having been dismissed in its entirety, there is no legal or factual basis on which he is entitled to any of the reliefs claimed. His claim for a declaration of possessory title, in respect of the subject lands registered by Deed No. 848 of 2016 is dismissed. I also make no order restraining the Sandys, their servants or agents from entering on or occupying the disputed land. No damages are awarded to Mr. Ollivierre as against Mr. Stephen Sandy for trespass and no order is made cancelling Deed No. 848 of 2016.

Miscellaneous

[112] For completeness, I turn to briefly consider other provisions of the **Limitation Act**. It stipulates that the right of action to recover land accrues to an administrator who is the sole beneficiary and who is also in possession of the land, on the date of the intestate's death, and becomes statute-barred 12 years after such death. This is the effect of section 17 (1) and paragraph 9 of the Schedule to the **Limitation Act**. It provides further that no such right of action is to be treated as accruing unless the land is in the possession of someone in whose favour the period of limitation can run.³⁹ Since he was not in possession of the property at the relevant time, it is clear that Mr. Ollivierre could not avail himself of those provisions.

Costs

³⁹ Paragraph 9 of the Schedule.

[113] There is no reason why the court should depart from its usual order as to costs. Accordingly, Donnessia Sandy and Yannic Sandy are entitled to recover from Mr. Ollivierre prescribed costs pursuant to CPR 65.5(2)(b).

ORDER

[114] It is ordered: -

1. Judgment is entered for Donnessia Sandy and Yannic Sandy.
2. Rawle Ollivierre's counterclaim is dismissed.
3. Rawle Ollivierre shall by 12.30 pm on June 30th, 2021 quit and deliver up to Donnessia Sandy and Yannic Sandy possession of the property described in the Schedule to Deed of Conveyance No. 848 of 2016; and shall arrange for his servants and agents to do likewise.
4. Rawle Ollivierre shall by 12.30 pm on 30th June 2021, remove or cause to be moved all structures that he has erected or caused to be erected upon the subject lands described in Deed of Conveyance No. 848 of 2016. Donnessia Sandy and Yannic Sandy are at liberty to dismantle any such structure which remains on the subject lands beyond that time.
5. Rawle Ollivierre is restrained whether by himself, his servants or agents from remaining on or trespassing on the said property registered by Deed of Conveyance No. 848 of 2016 at any time after 12.30 pm on 30th June, 2021.
6. Rawle Ollivierre shall pay to Donnessia Sandy and Yannic Sandy costs of \$7,500.00 pursuant to CPR 65.5(2)(b).
7. A penal notice in terms of CPR 53.3(b) is to be endorsed on this order.

[115] Preparation and delivery of this judgment took a little longer than normal. This was caused by technical issues which resulted in my case notes being destroyed by a computer virus. Consequently, the notes had to be re-constructed from the audio recording of the proceedings. Any inconvenience caused to the parties for the slight delay is regretted. I am grateful to counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar