

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

SAINT LUCIA

SLUHCVAP2020/0022

BETWEEN:

**[1] FRANCIS CHITOLIE
[2] VANCE CHITOLIE**

Appellants

and

ST. LUCIA NATIONAL HOUSING CORPORATION

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Gerard St. C Farara
The Hon. Mde. Esco Henry

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

Appearances:

Dr. Lloyd Barnett with Mr. Weiden Daley and Dr. Synther Chitolie for the Appellants
Mrs. Edith Petra Jeffrey-Nelson with Mrs. Esther Green-Ernest and Mr. Sahleem Charles for the Respondent

2021: June 30;
2022: January 13.

Civil Appeal – Land – Whether respondent is the owner of disputed land and entitled to possession – Whether appellants and their ancestors had been in occupation of the disputed lands for over 100 years – Whether the judge wrongly concluded that the unlogged 1976 survey plan could not be used as evidence of the appellants' occupation of the disputed land

Section 27 of Land Registration Act (LRA) – Voluntary Transfer - Whether 2008 Deed of Transfer was a voluntary transfer within meaning of section 27 of the LRA - Whether as a

result respondent's title was subject to the appellants' rights and interests as squatters – Consideration - Article 917A(1) and proviso (b) of the Civil Code of Saint Lucia

Rectification - Section 98 of the LRA – Alleged breach of duty by recording officer under Land Adjudication Act (LAA) - Whether recording officer's alleged failure during the Land Registration and Titling Project (LRTP) to return to meet with appellants amounted to a failure to discharge statutory functions and duties fairly – Whether this alleged failure constituted a 'mistake' entitling the appellants to an order for rectification - Whether appellants' failure to claim the disputed land during the LRTP or to avail themselves of the avenues of review and appeal under the LAA before the adjudication section became final disentitled appellants from challenging and seeking the cancellation of the respondent's registered title to the disputed land

Section 28(g) of the LRA - Whether appellants' and their ancestors' actual occupation and possession of the disputed land prior to the LRTP gave rise to a possessory title to or overriding interest in the disputed land – Whether any such rights and interests were extinguished by the first registration of the National Development Corporation ("NDC") as the proprietor of the original Parcel 46

Whether appellants had by virtue of long occupation and possession of the disputed land acquired and become entitled to overriding interests in the disputed land pursuant to the conjoint effect of sections 23(b), 27, and 28(f) and (g) of the LRA – Section 94 of the LRA - Prescription - Whether appellants had acquired a prescriptive title constituting an overriding interest pursuant to section 28(g) of the LRA and Articles 2103, 2103A, 2106, 2112 and 2064 of the Civil Code – Whether appellant entitled to reliefs sought in counterclaim

On 11th March 2009, the St. Lucia National Housing Corporation ("the respondent") commenced in the High Court claim No. 263/2009 against Mr. Francis Chitolie ("Francis") and Mr. Vance Chitolie ("Vance") (collectively "the appellants") claiming ownership of and entitlement to possession of land registered as Block 1020B Parcel 227 in the Quarter of Vieux Fort, which land has since been mutated to create Parcels 441, 444, 446 and 447 ("the disputed land"). The respondent pleaded that the disputed land, which was first registered under the Land Registration Act ("LRA") as part of Block 1020B Parcel 46, was transferred to it by the Southern Development Corporation ("SDC") by a Deed of Transfer executed in July 2008 ("the 2008 Deed of Transfer"). The respondent sought and obtained an injunction restraining the appellants from entering or remaining on the disputed land ("the 2009 injunction").

During the Land Registration and Titling Project ("LRTP") in Saint Lucia in mid-1987 the appellants or any of them did not claim the disputed land, whether on the basis of documentary title or long possession. They did not make a claim under section 6(1) of the Land Adjudication Act ("LAA") nor did they avail themselves of any right of review or appeal under the LAA. Instead, Francis made a claim during the LRTP to another parcel of land registered as Block 1022B Parcel 37. The disputed land, then part of what became Parcel 46, was claimed by the National Development Corporation ("NDC"). There being no rival claim, upon the adjudication section becoming final, the disputed land was in 1987 registered to NDC as the first proprietor under the LRA.

Prior to the claim in this matter, the respondent's predecessor in title, the NDC had, by a letter dated 13th February 1995 to Francis ("the 1995 Letter"), asserted that he had since March 1991 been illegally occupying 33.5 acres of its land at Aubrier, Vieux-Fort and was wrongfully claiming the said land as his property. The 1995 Letter demanded that Francis vacate the said land within 14 days failing which the NDC will take prompt action to secure repossession of its said land. By the said letter the NDC also required Francis to pay to NDC the sum of \$18,425.00 for loss revenue for the years 1991 to 1994. The said 33.5 acres is part of the disputed land. In 2006, NDC filed claim No. 594/2006 in the High Court against Francis ("the 2006 claim") wherein, *inter alia*, they sought a permanent injunction restraining Francis AKA Catchel from entering, remaining on, and continuing in the carrying out of the construction of any building or structure on NDC's land at Augier in the Quarter of Vieux Fort registered as Block 1020B 227. In the statement of claim, NDC averred, *inter alia*, that in June 2006 Francis entered upon and occupied Parcel 227 'for the purpose of farming and has commenced construction of a concrete structure on the said property and is in occupation of the said property illegally.' In July 2006, the court granted an interim injunction against Francis (until the returnable date of the said injunction) prohibiting him from carrying out the construction of any building or structure on the land comprising Parcel 227 ("the 2006 injunction"). The 2006 claim was discontinued in 2008 when the disputed land was transferred from NDC to SDC.

By its amended defence and counterclaim filed in Claim 263/2009, the appellants (as defendants) contended that the land which they lawfully owned and occupied is called Aubrier in Augier, Vieux Fort and is separate and distinct from the land claimed by the respondent at La Retraite, Vieux Fort and registered in the name of the respondent as Parcel 227. In 2012 the dispute between the respondent and the appellants concerning the disputed land was referred to mediation. The mediation agreement dated 9th November 2012 ("the mediation agreement") reached by the parties provided for the appointment of a licensed land surveyor to produce a registered survey plan and report which would display: (i) the boundaries of the land occupied by the appellants "which formed the northern part of the registered parcel 1020B 227 and bounded by Ravine Rosette on the West to the petit Riviere du Vieux Fort on the East"; (ii) all physical features, including houses and fences, on the said land; and (iii) any survey pegs or beacons placed by land surveyor Vernon Augustin ("Mr. Augustin") and represented on an unlodged plan of survey in possession of the appellants ("the unlodged Augustin Survey Plan"). The said unlodged Augustin Survey Plan was prepared by Mr. Augustin in 1976 and shows the area of the disputed land then occupied by the appellants. In accordance with the mediation agreement, a survey of the land was carried out by Mr. Allan Hippolyte, a licensed surveyor, who produced survey plan V2237T and a written report dated March 2014 ("the Hippolyte Survey").

The appellants asserted that they and their ancestors have been in lawful ownership, and continuous occupation and possession of the disputed land for over 100 years and throughout that period various generations of Chitolies had lived on and carried out commercial farming, among their acts of use and occupation on the disputed land. In support of this they relied, *inter alia*, on: (i) a Deed of Sale dated 9th September 1911 executed by Francis' grandfather, Chitolie Coolie ("the 1911 Deed") and survey a plan dated 1906 ("the 1906 survey plan"); (ii) a receipt dated in 1911 ("the 1911 receipt"); (iii) a

written agreement and assignment dated 19th July 1976 ("the 1976 Agreement") allegedly evidencing Francis' purchase of the disputed land from Stephen Chitolie, the last son of Chitolie Coolie; (iv) the unlodged Augustin Survey Plan; (v) the Hippolyte Survey; and (vi) the report of Mr. Jack McKenna ("Mr. McKenna") dated 24th May 2011 ("the McKenna Report"). It was also the appellants' case that they had acquired a prescriptive title to the disputed land based upon the long occupation, use and possession of it by themselves and their ancestors going back to 1906, and that they have been in receipt of the income from the said land. They asserted that such occupation and use gave rise to an overriding interest pursuant to section 28(f) and (g) of the LRA entitling them to a declaration that they are the lawful owners of the disputed land entitled to possession and to be registered as proprietors of the disputed land. They also contended that the recording officer's alleged failure during the LRTP to return to the disputed land to meet with them gave rise to a breach of duty and a mistake in the land adjudication process entitling them to rectification of the land registers pursuant to section 98 of the LRA.

The respondent's case was that the appellants were trespassers and are not entitled to ownership or possession of the disputed land. The respondent relied on its registered title to the disputed land under the LRA. In addition, it relied on the 1995 letter, the 2006 claim and the 2006 injunction as constituting interruptions in any period of occupancy or possession of parts of the disputed land by the appellants. The respondent also contended that the appellants, having failed to claim the disputed land during the LRTP as they were required to do under the LAA, cannot now invoke the court's jurisdiction to challenge its registration as proprietor as being void based on their (the appellants) asserted documentary or possessory title. They deny that the appellants are entitled an overriding interest in the disputed land pursuant to section 28(f) of the LRA on the basis of prescription or the limitations of action and/or section 28(g) on the basis of rights of a person in actual occupation of the disputed land or in receipt of the income therefrom. Further, the respondent contended that the appellants were not entitled to rectification of the land registers for the disputed land pursuant to section 98 of the LRA.

The learned judge considered four overarching issues together with several sub-issues and gave judgment in favour of the respondent. Essentially, the learned judge concluded that the respondent is the owner of Parcel 227 and is entitled to possession of the entirety of the disputed land and ordered that the appellants pay nominal damages for trespass and that they demolish and remove, at their own cost, all structures, including houses, fences and animal pods, on the disputed land, and give up vacant possession thereof after 9 months from the date of the judgment, unless the appellants sooner purchase from the respondent at market value the occupied area shown and determined by the Hippolyte survey plan No. VF2237T dated 29th August 2013, subject to an expert valuation by a valuer agreed to be the appellants and the respondent.

The appellants, being dissatisfied with the decision of the learned judge has appealed to this Court. The notice of appeal comprising 36 grounds raised nine (9) main issues. The Court therefore considered: (i) whether the learned judge erred in not concluding that the appellants and their ancestors have been in occupation and possession of the disputed land for several generations or at least to 1976 when the unlodged Augustin Survey Plan was carried out and, further, in rejecting the said survey plan as having no evidential value to the determination of the issues raises in this matter; (ii) whether the 2008 Deed was a

voluntary transfer within meaning of section 27 of the LRA, and whether consequently, the respondent's title was, pursuant to the terms of the said deed, subject to the appellants' rights and interests as squatters; (iii) whether the recording officer's alleged failure during the LRTP to return to the disputed land then occupied by the appellants and to meet with them, amounted to a failure by the recording officer and/or the adjudication officer to discharge their statutory functions and duties under the LAA fairly, thereby constituting a 'mistake' in the adjudication and registration process entitling the appellants to an order for rectification and the cancellation of the respondent's registration as proprietor; (iv) whether the appellants' failure or any of them to claim the disputed land during the LRTP or to avail themselves of the avenues of review and appeal under the LAA before the adjudication section became final, disentitled the appellants from challenging and seeking the cancellation of the respondent's registered title; (v) whether the appellants' and their ancestors' alleged rights and interests acquired as persons in actual occupation and possession of the disputed land and in receipt of the income therefrom prior to the LRTP in Saint Lucia, had given rise to a possessory title to or overriding interest in the disputed land, which rights were not extinguished by NDC's first registration as the proprietor of the original Parcel 46, and whether the respondent's title to the successor Parcel 227, acquired by the 2008 Deed, was also subject to the appellants' existing unregistered occupational and possessory rights and interests; (vi) whether the appellants had, by virtue of their ancestors long occupation and possession of the disputed land, acquired and become entitled to overriding interests in the disputed land pursuant to the conjoint effect of sections 23(b), 27, and 28(f) and (g) of the LRA; (vii) whether the appellants had acquired a prescriptive title to the disputed land constituting an overriding interest pursuant to section 28(g) of the LRA and Articles 2103, 2103A, 2106, 2112 and 2064 of the Civil Code of Saint Lucia ("the Civil Code") entitling them to an order for rectification and registration as the proprietors; (viii) whether the learned judge erred in law in not finding that the appellants had, by the Chitolies' long occupation and possession of the disputed land, acquired an overriding interest in the said land by virtue of the limitation of actions and section 28(f) of the LRA; and (ix) whether the learned judge ought to have granted the reliefs sought by the appellants in their counterclaim, including their claim to damages and compensation.

Held: dismissing the appeal, affirming the orders of the learned judge at paragraph 204 of the judgment; awarding costs in the appeal to the respondent to be paid by the appellants jointly and severally such costs to be assessed by a judge of the High Court or master at no more than two-thirds of the respondent/claimant's costs in the court below, if not agreed within 21 days, that:

1. In the circumstances of this case, the learned judge erred in concluding that the unlodged 1976 Augustin Survey Plan is of no evidential value concerning the appellants' occupation of the disputed land. It was clear from the other evidence before the judge that material facts of occupation, boundaries and monuments as referenced in the unlodged Augustin Survey Plan have been corroborated and verified by subsequent, independent and authenticated survey plans and reports, namely the McKenna Report and the Hippolyte Survey. Accordingly, the learned judge erred in not taking into account the unlodged Augustin Survey Plan as evidence of the appellants' or Francis'

occupation of an area of the disputed land in 1976 and the erection thereon of a house to the northern part of Parcel 227. This was cogent evidence of occupation by the appellants at least as far back as 1976 of an area of Parcel 227.

2. Notwithstanding the evidential value of the unlodged Augustin Survey Plan, there is no cogent evidence of the Chitolies' occupation of the entirety of the land comprising the disputed land. This is not borne out by the 1995 letter, the unlodged Augustin Survey Plan, the McKenna Report, the 2011 survey report of Mr. Ronald Polius, the Hippolyte Survey or the testimony of Mr. Hippolyte at trial to the effect that the Chitolies occupied the northern part of Parcel 227. Furthermore, the totality of the evidence led at trial disclosed that in 1991 the Chitolies' occupation of the disputed land extended to some 33.5 acres of the land, and they continued thereafter to expand their acts of occupation by rebuilding the wooden dwelling-house into a concrete structure and by building a fence around the area which they occupied. Moreover, on the totality of the evidence the learned judge was correct in not accepting the evidence of Jonah Chitolie that his ancestors owned and occupied the entirety of the disputed land going back several generations for over 100 years.
3. Section 27 of the LRA provides that where there is a transfer without consideration (a voluntary transfer), the transferee obtains a title to the land subject to any unregistered rights or interests to which the transferor held it. Properly construed, the 2008 Deed by which the respondent obtained title to Parcel 227, is not a voluntary transfer within the meaning of section 27. On a proper reading of the 2008 Deed, it satisfies the definition of 'consideration' under Article 917A(1) proviso (b) of the Civil Code. The said instrument was clearly for an identifiable 'cause or reason' for entering into the contract or obligation incurred and there is no need for consideration to be monetary in nature as Article 917A(1) Proviso (b) provides that it may be either onerous or gratuitous. Accordingly, the respondent's absolute title to Parcel 227 is not subject to any unregistered rights or interest subject to which the SDC or the NDC held title to the said property, unless such rights or interests constitute overriding interests under section 28 of the RLA.

Section 27 of the **Land Registration Act**, Chapter 5.01 of the Laws of Saint Lucia applied; Article 917A of the **Civil Code of Saint Lucia**, Chapter 4.01 of the Revised Laws of Saint Lucia 2017 applied.

4. The remedy of rectification of the land register by the court pursuant to its powers under section 98 of the LRA, is available only where the mistake or fraud alleged occurred in the process of registration, including a first registration. Any failure by the recording officer to meet with Francis, even if accepted as a fact, did not amount to a failure or breach of statutory duty by him such as to render the process unfair or to lead to a mistake in the land adjudication process applicable to the original Parcel 46. There is no suggestion, and there cannot be any, that the adjudication record, when it

became final, contained any error which led to the Registrar of Lands incorrectly transcribing entries onto the land register for Parcel 46. Likewise, there is no suggestion that the recording officer acted in excess of his statutory authority or that the adjudication officer acted contrary to law by failing to adjudicate rival claims to Parcel 46 or any part thereof or exceeded his statutory powers so as to render the adjudication record a nullity or patently incorrect. The appellants made no claim to the disputed land during the LRTP, whether based on documentary or possessory title. No 'mistake' was properly pleaded by the appellants, and there could be no error, omission or mistake in the registration process such as to lead to the court's powers under section 98 of the LRA being invoked and the rectification of the land registers relating to the disputed land.

Section 23 and 98 of the **Land Registration Act**, Chapter 5.01 of the Laws of Saint Lucia applied; **James Ronald Webster et al v Beryl St. Clair-Fleming** [1995] ECSCJ No. 32 (delivered 8th May 1995) followed; **Sylvia Louisien v Joachim Rodney Jacob** [2009] UKPC 3 applied.

5. The appellants were required by the provisions of the LAA to claim any land in which they had an interest as owners during the LRTP. Their failure to make a claim, whether based on documentary or possessory title, meant that the title to the disputed land fell to be recorded in the names of the person(s) who claimed it, subject to whether the title to be vested is adjudged to be absolute or provisional title. Once the adjudication record became final and absolute title to the said land vests in the proprietor, the only avenue available to a person to challenge that title is by way of an application for rectification of the land register under section 98 of the LRA, in circumstances where there has been fraud or mistake in the registration of the parcel, including its first registration. The appellants, some 34 years after the first registration of the NDC as proprietor with absolute title to Parcel 46, can no longer, by way of a defence and counterclaim, claim ownership of the disputed land and invoke the statutory remedy of rectification. The remedy of rectification pursuant to section 98 is not an alternative remedy for a party who failed to avail himself of the process of making a claim to land under the LAA or of the avenues for review and appeal provided in the said Act.

Sections 6, 8, 15, 20, 21, 23 and 24 of the **Land Adjudication Act**, Chapter 5.06 of the Laws of Saint Lucia applied; **Graham-Davis and Another v Charles and Others** (1992) 43 WIR 188 distinguished; **David George v Albert Guye** [2019] CCJ 19 (AJ) distinguished; **Moses Joseph and others v Alicia Francois consolidated with Matty and Others** [2015] ECSCJ No. 190 (delivered 21st August 2015) followed.

6. The conjoint effect of the LAA and LRA in Saint Lucia is that the adjudication and first registration of a parcel of land interrupts any prescriptive rights which have or were being acquired prior to first registration and, accordingly, the period of occupation prior to first registration is not to be counted or reckoned when making a defence or claim based on prescription. The appellants' failure

to make a claim during the LRTP did not preserve any entitlement to maintain a claim to prescriptive title or any other right, title or interest in the disputed land after the first registration in 1987. In such circumstances, the first registration of Parcel 46 in the name of NDC as proprietor extinguished any documentary or possessory claim which the appellants had acquired or may have been in the process of acquiring based upon their actual occupation of the said land or receipt of the income from it. Any claim which the appellants make based upon occupation of and receipt of income from the disputed land prior to 1987, were and have been extinguished by the legislative effect of the LAA and LRA which required them at the time to make a claim to the land which they occupied, which they failed to do. Accordingly, the learned judge was correct to so conclude, and to also conclude that any occupational claim by the appellants would have to be reckoned from 1987.

Sections 6, 8, 16 and 18 of the **Land Adjudication Act**, Chapter 5.06 of the Laws of Saint Lucia applied; Sections 23(b), 27, 28(f) and (g) of the **Land Registration Act**, Chapter 5.01 of the Laws of Saint Lucia applied; **Moses Joseph and others v Alicia Francois consolidated with Matty and Others** [2015] ECSCJ No. 190 (delivered 21st August 2015) followed.

7. An interest acquired after first registration of land in Saint Lucia under the LRA may constitute an overriding interest. This includes rights acquired or in the process of being acquired, such as the rights of persons in actual occupation or receipt of income from the land. Therefore, though the unlodged Augustin Survey Plan was cogent evidence that the appellants and, in particular Francis, had been in occupation of at least part of the disputed land as far back as 1976, they are precluded from relying on any possession prior to the LRTP in the 1980s. It follows then that the occupation of the disputed land or part thereof by the appellants after 1987 amounts to a period of 19 years up to the commencement of the 2006 claim and 21 years up to the commencement of this claim in 2009, both of which periods fall short of the 30-year period proscribed in Article 2103A of the Civil Code necessary to acquire prescriptive title. Accordingly, the appellants' claim to a prescriptive title to the disputed land fails and the learned judge was correct to so find.

Article 2103A of the **Civil Code of Saint Lucia**, Chapter 4.01 of the Revised Laws of Saint Lucia 2017 considered; Section 28(f) and (g) of the **Land Registration Act**, Chapter 5.01 of the Laws of Saint Lucia applied; **Moses Joseph and others v Alicia Francois consolidated with Matty and Others** [2015] ECSCJ No. 190 (delivered 21st August 2015) followed; **Ulina Jennifer George v Hilary Charlemagne** [2003] ECSCJ No. 33 (delivered 3rd April 2003) considered; **Ferdinand James v Planviron (Caribbean Practice) Limited and Another** [2019] ECSCJ No. 336 (delivered 16th October 2019) followed.

8. The judge was correct in declining to consider the appellants' reliance upon the 10-year limitation period in Article 2112 of the Civil Code as a defence to the respondent's claim as it was only raised for the first time in their

submissions at the conclusion of trial and not at case management conference as the rules require.

9. The appellants having failed to establish a valid claim to the disputed land whether based upon documentary title or possession, it follows that the learned judge was correct and there is no basis upon which this Court ought to overturn the decision in the court below dismissing the amended counterclaim and all reliefs sought thereby.

JUDGMENT

- [1] **FARARA JA [AG.]:** This is an appeal from the judgment and orders of the High Court dated 16th July 2020. The learned judge gave judgment for the respondent/claimant on its claim to ownership and entitlement to possession of land in Saint Lucia registered at the Land Registry as Block 1020B Parcel 227, which Parcel had been mutated to create Parcels 441, 444, 446 and 447 (“the disputed land”). The judge also dismissed the appellants’ counterclaim for certain reliefs. These include cancellation of the registration of the respondent as proprietor of Parcels 441, 444, 446 and 447; a declaration that the appellants are the lawful owners/proprietors of the said four parcels of land as shown on survey plan No. VF2237T; an order that the appellants be registered as the proprietors with absolute title to the said parcels of land; and damages for trespass to the said land and destruction of their farm and other improvements thereon.

Overview

- [2] This matter is of some vintage. The fixed date claim form was filed on 11th March 2009. On 31st March 2009, the High Court granted, on application by the respondent, an interim injunction restraining the appellants from constructing or continuing to construct any type of building, fence or structure or undertaking any development as defined in the **Physical Planning and Development Act**¹ on the property registered as Parcel 227; restraining them from brandishing any cutlass, gun or any tool, instrument, equipment or otherwise whatsoever; and precluding them or their servants, agents or any person having their consent or

¹ Cap. 5.12 of the Revised Laws of Saint Lucia.

authority, from entering and/or remaining on the property Parcel 227 (“the 2009 injunction”). From what is stated in the judgment under appeal, the several applications by the appellants to have the 2009 injunction discharged were unsuccessful. Accordingly, the 2009 injunction remained in place up to the trial and delivery of the judgment of the court below. The learned judge also noted at paragraph 196 of the judgment that the 2009 injunction was breached by the appellants’ continuing and completing construction of a house on and erecting a fence around the entirety of the land comprising Parcel 227.

- [3] A defence and counterclaim was filed on 8th April 2009 and amended several times thereafter. The last amended version was filed on 8th September 2016 (“the 2016 Amended Defence and Counterclaim”). An amended Reply and Defence to Counterclaim was filed on 19th October 2016.
- [4] The matter was referred to mediation in 2012. While not achieving a settlement of the dispute over ownership and possession of the disputed land, it resulted in a mediation agreement being entered into by the parties on 9th November 2012 (“the Mediation Agreement”). The Mediation Agreement, which was approved by a court order dated 19th March 2013, provided for the appointment of a licensed land surveyor to produce a registered survey plan and report which would display (i) the boundaries of the land occupied by the appellants ‘which form the northern part of’ Parcel 227; (ii) all physical features including houses, ponds, fences etc. on the said land; and (iii) any survey pegs or beacons placed by surveyor Vernon Augustin and represented on an unlodged plan of survey in possession of the appellants.
- [5] The reference in the Mediation Agreement to the survey plan prepared by Mr. Vernon Augustin, is a reference to an unlodged survey plan prepared by him in 1976 showing the area of the disputed land then occupied by the appellants, in particular the first-named appellant, Francis Chitolie, who had commissioned the survey, and to the survey pegs and beacons shown on that unlodged plan as

placed at that time by Mr. Augustin (“the unlodged 1976 Augustin Survey”). In accordance with the Mediation Agreement, a survey of the area of land in occupation by the appellants was carried out by Mr. Allan Hippolyte (“Mr. Hippolyte”) in 2013. He produced a survey plan V2237T dated 20th August 2013 and a written report dated March 2014 (collectively “the 2014 Hippolyte Survey”). The 2014 Hippolyte Survey was admitted into evidence at the trial, and its findings remained unchallenged evidence in the court below.

[6] Prior to the commencement of the claim in this matter, the respondent’s predecessor in title to Parcel 227, the National Development Corporation (“NDC”), had, by letter dated 13th February 1995 to the first appellant, Francis Chitolie, accused him of illegally occupying 33.5 acres of NDC’s lands at Aubrier Vieux-Fort ‘since March 1991’, threatened Francis with legal action ‘to secure repossession of its lands’, and required him to pay compensation to the NDC for lost revenue and to vacate the said 33.5 acres (“the 1995 Letter”). The 1995 Letter was in evidence at the trial. It was of some significance to the question of when the appellants’ occupation of the disputed land had in fact commenced.

[7] Also prior to the claim in the instant matter, NDC had commenced a claim in 2006 against the first appellant, Francis Chitolie (aka Catchel) (“the 2006 Claim”). By the 2006 Claim, NDC sought a permanent injunction to prevent Francis from entering on the land Parcel 227, and from continuing or engaging in the construction of any building or structure on Parcel 227; and an order pursuant to section 30 of the **National Development Corporation Act**² (“NDC Act”) that Francis ‘do vacate the said land and demolish [the] structure erected thereon within two (2) weeks ...’. On 27th July 2006, the High Court granted in the 2006 Claim, on a without notice basis, an interim injunction against Francis restraining him from entering, remaining on, continuing or engaging in the carrying out of the construction of any building or structure on the land comprising Parcel 227, until the returnable date of the said injunction (“the 2006 Injunction”). The 2006

² Act No. 23 of 2001.

claim was discontinued by NDC in 2008. Both the 2006 Claim and 2006 Injunction order were in evidence at the trial in the instant matter.

- [8] In the instant matter, the appellants' case, as initially pleaded in their defence and counterclaim, was that the land which they occupied was located at Aubrier in Augier, Vieux-Fort, and is different from the land which the respondent claimed at La Retraite registered as Parcel 227. It was not until after the 2014 Hippolyte Survey, that the appellants finally accepted that the land which they claimed as owners entitled to possession, Parcels 441, 444, 446 and 447, was in fact the same as the land registered previously as Parcel 227 in the name of the respondent.

The Pleadings Cases: Competing Claims to Land – La Retraite or Aubrier or Obrier?

Respondent's Case

- [9] In brief, the respondent's claim in the court below was rooted on its registered title to Parcel 227. The respondent pleaded that the disputed land Parcel 227 (now Parcels 441, 444, 446 and 447) was transferred to it by the Southern Development Corporation ("SDC") by a deed of transfer executed and registered in July 2008 as Instrument No. 4252/2008 ("the 2008 Deed of Transfer"). The respondent's case was that it is and was at all material times the owner of Parcel 227 entitled to possession. It contended that the appellants were not the owners of the said land and were never entitled to possession of it or any portion of it. The appellants were accordingly trespassers or 'squatters' on the land comprising Parcel 227, having been in unlawful occupation of a portion of the said land from before it was transferred to the respondent vide the 2008 Deed of Transfer.
- [10] It was the respondent's case that the 1995 Letter, the 2006 Claim and the 2006 Injunction obtained by its predecessor the NDC, constituted an interruption in any period of occupancy or possession of parts of the disputed land by the appellants. They asserted that the 2006 Injunction was granted when the house

being constructed on Parcel 227 by Francis was at its foundation stage. However, Francis had continued to construct the said house thereon in breach of the 2006 injunction. As matters proceeded, the 2006 Claim was discontinued in 2008 when the property was transferred from NDC to SDC. This gave rise during the trial to an issue as to whether the 2006 Injunction was automatically discharged and rendered ineffective as a consequence of the discontinuance of the 2006 Claim. However, as the evidence revealed, construction of the said house on the disputed land by the appellants continued after the 2006 Claim was discontinued, as did their commencement and erection of a fence around Parcel 227.

- [11] It was also the respondent's case in the court below, that it has been precluded from having full access to its land comprising Parcel 227 by the actions of the appellants, which actions came to a head when, on 17th February 2009, the appellants prevented Mr. Joseph Alexander, a licensed surveyor engaged by the respondent, and his team, from undertaking a survey of the property. These acts of obstruction were said to involve the brandishing of cutlasses and a gun which had the effect of bringing the survey to a halt. These actions by the appellants, as pleaded, resulted in the delay of a housing development project consisting of 292 affordable housing units, which the Government of Saint Lucia had earmarked for 40 acres of the land to be partitioned from the southern portion of Parcel 227.

Appellants' Case

- [12] The appellants' case as pleaded in their 2016 Amended Defence and Counterclaim, is that they are the lawful owners in occupation and entitled to possession of an area of land called Aubrier in Augier, Vieux Fort, as shown on the Hippolyte Survey Plan No. VF 2237T, which land is registered as Block 1020B Parcels 441, 444, 446 and 447. The appellants plead that their land is separate and distinct from the land claimed by and registered in the name of the respondent, which land the appellants contend is situate in an area called La

Retraite, and is not part of their lands in Aubrier. They rely on the Register of Deeds and Mortgages in Vol. 162A No. 199632 as evidencing the title of the second appellant, Francis Chitolie and his grandfather, Chitolie Coolie, to the said lands now registered as Parcels 441, 444, 446 and 447. The appellants also contended that the land at La Retraite purchased by the Government in 1952 by deed contained in Vol. 92 No. 59243 ("the 1952 Deed") shows boundaries which are distinctly different from their surveyed lands at Aubrier and cannot be the same land.

[13] The appellants also pleaded that the registration of Parcel 227 in the name of the NDC as registered proprietor on 23rd June 1987 is void, as there are no documents which support that registration, there was no adjudication record for Block 1020B Parcel 227, and no documents which show what title NDC had to the property. They asserted that the Land Register for Parcel 227 refers to an adjudication record which has never existed, and there is no survey plan or other title document showing which area of land Parcel 227 represents or that it is land at La Retraite. Furthermore, there is no adjudication record for La Retraite at the Land Registry.

[14] It was also a plank of the appellants' pleaded case that the first registration of Block 1020B Parcel 227 is ultra vires sections 9(1), 10 and 11 of the **Land Registration Act**³ ("LRA") and is therefore null and void. Accordingly, all subsequent transfers of title to and registrations of SDC and the respondent ("NHC") are null and of no legal effect, as NDC was incapable of transferring title, the Act having not permitted an unlawful registration.

[15] The appellants contended that the transfer from SDC to the respondent was therefore null and void and incapable of transferring good title to the disputed land to the respondent. The registration of the respondent's title was ultra vires section 37(1) of the LRA. Furthermore, they asserted, the statutory instrument

³ Chapter 5.01 of the Laws of Saint Lucia.

by which NDC purported to transfer the property to the respondent, does not satisfy the requirements of a valid transfer under the LRA and was ultra vires sections 56(1) and 67(1) of the said Act and section 26(1) of the NDC Act. Additionally, the appellants contended before the learned judge that SDC is not established as a statutory body under the laws of Saint Lucia and was incapable of transferring title in the property to the respondent. Much of these contentions and arguments have, correctly and appropriately, not been relied on by the appellants in arguing their appeal before this Court.

[16] The appellants relied on the 2008 Deed of Transfer by which the SDC transferred Parcel 227 (among other parcels of land) to NHC. They contended that the provisions of the 2008 Deed of Transfer made the respondent's claim unsustainable, since it expressly mandates non-interference with their land by making the respondent's title thereto expressly subject to and bound by their rights as persons in actual occupation of the said land with pre-existing boundaries. More specifically, the appellants relied on the provisions of the 2008 Deed of Transfer which provide that the transfer to the respondent was made for the purpose of granting title to occupied lands and for housing development on unoccupied lands. Accordingly, it was the appellants' case, that the respondent was estopped by virtue of the provisions of the 2008 Deed of Transfer from bringing the claim against them for land occupied by them and precluded from establishing the intended housing development on land occupied by them. They plead that the respondent trespassed on to their (the appellants') land and, in breach of the 2008 Deed of Transfer, destroyed their farm for the purpose of the housing development.

[17] The appellants also contended that the 2008 Deed of Transfer expressly made the transfer of Parcel 227 to the respondent, subject to the overriding interest of the appellants, as was acknowledged by the respondent. In this respect, the appellants relied upon the 2014 Hippolyte Survey and the unlodged 1976 Augustin Survey, as evidence of the land which they and their family occupied.

They averred that they and their predecessors have been in lawful ownership, occupation, and possession of the Aubrier lands for over 100 years from the time of their great grandfather's 1906 survey and purchase in 1911, to their father's purchase and survey in 1976 and the recent court ordered Hippolyte Survey in 2014. At paragraph 47 of the Amended Counterclaim, the appellants pleaded that they were at all times the owners by purchase entitled to possession of the lands at Aubrier registered as Parcels 441, 444, 446 and 447 as shown on the Hippolyte survey plan VF2237T; alternatively they were entitled to be registered as proprietors of the said land by prescription or by overriding interest under section 28(f) and (g) of the LRA.

[18] It was also the case for the appellants at trial that the respondent's claim was statute-barred pursuant to Articles 2103, 2103A and 2106 of the **Civil Code of Saint Lucia**⁴ ("the Civil Code"), since Francis Chitolie had purchased the land in Aubrier in 1976, a period in excess of 30 years prior to the claim being brought. They averred that the respondent cannot rely on the 2006 Claim which was discontinued in 2008, as interrupting the limitation period. In this regard, they relied on rule 37.2(a)(ii) of the **Civil Procedure Rules 2000** ("CPR") and cause of action estoppel, which they say bars subsequent proceedings against them.

[19] The appellants also asserted that the 2006 Injunction did not continue in effect once the 2006 Claim had been discontinued in 2008. In support of this argument, they relied on rules 17.3, 17.4(2) and (5) to (7) of the CPR.

[20] As to their acts of occupation and possession of the disputed land, the appellants asserted that they had been in possession of the entirety of Parcel 227 going back several generations of Chitolies. They and their family had built a number of houses and other structures on the disputed land (not just the one house and fencing complained of by the respondent), and had operated a multi-million-dollar farm investment on the land for many years. They alleged that it is the

⁴ Chapter 4.01 of the Revised Laws of Saint Lucia 2017.

respondent who trespassed on to their land at Aubrier, broke and entered their farm, demolished and destroyed their fence and gate, slaughtered their animals, and cleared their land in order to carry-out the unlawful survey. They rely on the 2014 Hippolyte Survey as evidencing the destruction inflicted by the respondent and its servants and agents on the property, and the 2014 Valuation Report of Mr. Tedburt Theobalds (“the Theobalds 2014 Valuation”), both of which were in evidence before the learned judge. They also contended that they continue to suffer loss of their farm, livelihood, and income as a result of the 2006 Injunction, which was obtained on the basis of the void registration of Block 1020B Parcel 227, and the respondent is liable for all the resulting damage and loss and for restoration of their land, as assessed and set out in the Theobalds 2014 Valuation ,and in his updated valuation report dated 6th September 2016 (“the 2016 Theobalds Valuation Report”). The 2016 Theobalds Valuation Report show the loss and damage as of the year 2015 to have increased the overall sum to US\$1,027,254,050.81.

- [21] The appellants counterclaimed for a declaration that they are the lawful owners of the property, on the footing of a deed of sale dated 9th September 1911 registered in Vol. 68 No. 34323 at the Registry of Deeds and Mortgages (“the 1911 Deed”), a receipt issued in 1911 (“the 1911 receipt”), and a survey plan dated 1906 (“the 1906 survey”). They plead that by the 1911 Deed, Chitolie Coolie (Francis’ grandfather), purchased the disputed land. The 1911 receipt acknowledges the registered power of attorney of Mary Melville, the vendor, in favour of her husband Sydney Melville, and the registered declaration of succession of the vendor as at the date of purchase. Accordingly, it was the appellants’ case below that the first-named appellant, Francis Chitolie, became the lawful owner of the disputed land when he purchased it from Stephen Chitolie (the last son of Chitolie Coolie) by written agreement and assignment dated 19th July 1976 (“the 1976 Agreement”).

- [22] The appellants placed great emphasis on the fact that shortly after Francis purchased the land in 1976, he had it surveyed by licensed land surveyor, Mr. Vernon Augustin, (the unlodged 1976 Augustin Survey), which survey plan was never registered because of Mr. Augustin's sudden death. The appellants also relied on the 2014 Hippolyte Survey in support of their defence and counterclaim. They asserted that the boundaries of the 2014 Hippolyte Survey replicate the boundaries of the unlodged 1976 Augustin Survey, and is the land comprising Parcels 441, 444, 446 and 447, which land the appellants and their predecessors have occupied for over 100 years.
- [23] Specifically, as to their occupation of the disputed land, the appellants asserted that their long-established dwelling-house on the property was recorded on the unlodged 1976 Augustin Survey, and over the years they and their predecessors have improved that dwelling-house and developed the land into a farm investing in crops, livestock and infrastructure. The appellants were born and raised on the said land and have continued their predecessors' occupation, use and development of the land. The entire land is fenced and gated, and they reside there with their family of about 20 persons. Again, they relied evidentially on the 1976 unlodged Augustin Survey and the 2014 Hippolyte Surveys as showing the extent of their occupation and development of the lands, and the Theobalds' Valuation Reports as showing the extent of the damage and destruction to their property and farm.
- [24] As to trespass on to their land and the destruction of their property thereon, the appellants asserted that the respondent and its servants and agents uprooted the survey iron pegs placed by Mr. Augustin, demolished the fencing, destroyed the gate, slaughtered and scattered their animals, destroyed crops, bulldozed and excavated the farm, created roads and gullies on the land, and sent squatters to build houses within the appellants' fences. They contended that the 2014 Hippolyte Survey clearly shows the extent of their occupation of the land,

including fences and survey monuments from 1976, in excess of the 30-year limitation period.

- [25] By their counterclaim, the appellants sought a number of reliefs, including an order cancelling the respondent's registration as owner or registered proprietor of Block 1020B Parcels 441, 444, 446 and 447; a declaration that they are the lawful owners of the land comprising the said four parcels as shown on the land survey VF 2237T annexed to the Hippolyte Report; and an order that they be registered as the proprietors of the said four parcels of land with absolute title. The appellants also counterclaimed for, *inter alia*, damages including the sum of US\$1,027,254,050.81 as compensation for the unlawful destruction of their farm as shown in the valuation reports of Mr. Theobalds dated respectively 9th October 2015 and 6th September 2016.

Reply and Defence to Counterclaim

- [26] In response to the Defence and Counterclaim, the respondent asserted, contrary to the appellants' pleading in their defence, that during the Land Registration and Titling Project ("the LRTP") in Saint Lucia, the disputed land now parcel 227 was part of the land claimed by its predecessor in title, NDC, and is shown on the adjudication record for claim No. 6K-207 relating to Block 1020B Parcel 46. The documents produced to the adjudication officer in proof of the NDC claim were two vesting orders: (i) Vieux Fort Development Area Vesting Order 1974 (No. 31 of 1974) and (ii) Vieux Fort Development Area Vesting (Amendment) Order 1976 (No. 41 of 1976). Furthermore, the land was recorded on the map-sheet as 'La Retraite'.
- [27] The respondent averred that the 2014 Hippolyte Survey shows that the land occupied by the appellants falls within the area recorded in the Land Registry as La Retraite and originally registered as Block 1020B Parcel 46, which land the respondent and its successors have been the owners of with absolute title from 1987. It was also averred that the appellants did not claim the disputed

land during the LRTP as they were required to do under the **Land Adjudication Act**⁵ (“the LAA”). Subsequently, Block 1020B Parcel 46 (the original parcel) was mutated resulting in Parcel 227. Accordingly, Parcel 227 constitutes a part of the original Parcel 46 of which there is an adjudication record. Parcel 227 was first registered in the name of NDC and subsequently in the name of the respondent as sole registered proprietor.

- [28] The respondent specifically asserted that the land in dispute is not part of Aubrier (as the appellants pleaded). Importantly, the respondent pleaded that the appellants, having not availed themselves of the review and appeal procedure under the LAA, cannot now invoke the court’s jurisdiction to challenge as void the respondent’s registration as the proprietor of the land comprising Parcel 227 based upon their asserted documentary or possessory title. Finally, the respondent contended that NDC is its predecessor in title and the appellants have never been in peaceful and unequivocal possession of the property. It denied that the 2008 Deed of Transfer precluded it from removing the appellants from the area of the disputed land which they occupied as shown in the 2014 Hippolyte Survey or from establishing a housing development on the property, as the appellants alleged in their Amended Defence and Counterclaim.

Judgment of the High Court

- [29] The learned judge identified four ‘overarching’ issues for consideration and determination. Before entering upon a detailed consideration and analysis of each of the four overarching issues, the learned judge examined, in some detail, the land registration system in Saint Lucia pre- LRTP and as brought into force by the LAA and RLA. The four overarching issues analysed and considered by the learned judge in the judgment below are: (i) whether the respondent is the owner of Block 1020B Parcel 227 or Block 1020B Parcels 441, 444, 446 and 447 entitled to possession thereof; (ii) [whether] the respondent is estopped

⁵ Chapter 5.06 of the Laws of Saint Lucia.

from the reliefs sought by virtue of the express terms of the 2008 Deed of Transfer; (iv) whether the appellants have any interest that can defeat the respondent's registered title; and (iv) what remedies is the respondent entitled to.

[30] On the first issue, the learned judge, having analysed each of the four related issues, reached the following conclusion: -

“[93] It is therefore undeniable that [the respondent] is the owner of Parcel 227 (accepted as now being Parcels 441, 444, 446 and 447) given that [the respondent] is registered as owner with absolute title on the land register for the respective Parcels. There can be no assertion of title/ownership based on any documents which predated the LRTP (the [appellants'] 1911 Deed and corresponding receipt and/or 1976 Deed). There is also no question of whether the said parcels are called or located in either La Retraite, Augier or Aubrier, given that lands are now identified by their block and parcel numbers. [The appellants] have conceded, and the Hippolyte Survey confirms, and the Court therefore accepts and finds that [the appellants] are in occupation of the said Parcel 227 (now Parcels 441, 444, 446 and 447).”

[31] On the second issue, the learned judge concluded that NHC was not estopped from making the claim against the appellants by virtue of the 2008 Deed of Transfer.

[32] Before coming to her conclusions on the third issue and its eight related issues, the learned judge opined with respect to two 'un-pleaded issues'. She observed, at paragraph 170, that 'the issue of whether the respondent is estopped in the claim by virtue of the limitation period of 10 years for recovery of the land against [the appellants] was not pleaded by the appellants and was raised for the first time in their submissions.' The judge accordingly declined to consider that issue. The learned judge also observed that the appellants had not pleaded, but seem to be relying in their submissions, on a claim of mistake or fraud pursuant to section 98 of the LRA. The learned judge likewise declined to treat with this non-

pleaded issue. Citing **Sylvia Louisien v Joachim Rodney Jacob**⁶ and **Moses Joseph and others v Alicia Francois consolidated with Matty and Others**,⁷ the judge opined that:

“... mistake or fraud must be specifically pleaded and proven, and, for the purpose of establishing the basis for rectification of the land register, must relate to mistake or fraud in the registration process. Mistake or fraud pursuant to section 98 of the LRA cannot be used as an alternative remedy for a claimant under the LAA who failed in his/her claim and omitted to use the avenues of review and appeal, or a person who failed to make a claim altogether.”

[33] The learned judge concluded on the third issue in these terms: -

“[172] [The respondent] is the owner of the Property by virtue of its registration as proprietor on the land register for [Block] 1020B [Parcel] 227 (now [Block] 1020B 441, 444, 446 and 447). [The appellants] have failed to substantiate their defence or counterclaim. Their deeds of sale and/or receipt of purchase prior to the LRTP can give them no title or overriding interest in the Property pursuant to section 28(g). They have also failed to establish that [the respondent] is barred from bringing this claim by 30 years prescription or otherwise. [The appellants] therefore fail in their claim for ownership and possession of the Property, and trespass against [the respondent] and are not entitled to any of the relief sought. It therefore stands to reason that [the appellants] are in illegal occupation of [the respondents'] land for which it is entitled to remedies which will be discussed below.”

[34] On the fourth issue, the learned judge, considered four specific remedies. Firstly, on the question of whether the appellants' structures erected or placed on the disputed land constitute improvements entitling them to be compensated pursuant to Article 373 of the **Civil Code**, the judge declined to order the payment of compensation on the basis that the appellants had not acted in good faith in erecting these structures on the land, that is, in the belief that they were the owners of the land, but had done so or continued to do so in clear breach of the injunction in the 2006 Claim (which claim was discontinued) and the

⁶ [2009] UKPC 3.

⁷ [2015] ECSCJ No. 190 (delivered 21st August 2015).

injunction in the present claim. The judge having considered the provisions of Articles 372, 373 and 2066 of the **Civil Code** and the decision of the Quebec court in **Gagnon v Loubliere**,⁸ concluded that,

“[a]rticle 373 which gives the court discretion to order the possessor to keep the property on payment of its estimated value is premised on the possessor having acted in good faith. Where the possessor has acted in bad faith, articles 372-373 give the owner the breadth of options as to how the improvements are to be treated.”

[35] She continued at paragraphs 179 and 180 as follows:

“The evidence is clear that [the appellants] continued and completed construction of their house and fence in flagrant disregard for the court ordered injunctions against Francis in the 2006 Claim and against both [appellants] in the present claim. They made several applications to have the injunction in this claim discharged, all of which were denied. Yet, they continued construction wrongfully and it would appear even expanded the area of their occupation. It cannot be said, in these circumstances, that [the appellants] occupied the Property in good faith, when they were aware of the dispute as to ownership and acted in willful disregard for the Court’s orders.

Their occupation consisted of their dwelling houses, farm, and the fence around the Property. It is clear that these structures were for their own use and benefit and were also not ‘necessary’ so as to be considered an improvement for which compensation could be awarded. I therefore conclude that [the appellants] are not entitled to compensation.”

[36] However, the judge declined to grant a mandatory injunction ordering the demolition of the structures erected or placed by the appellants on the disputed land.

[37] Regarding the third remedy, damages for trespass to the respondent’s land, the judge opined:

“[190] The evidence is that [the appellants] continued their construction of the house and fence on the Property despite the Court order of 31st March 2009 and in disregard for [the respondent’s] rights. Unlike most cases of trespass, [the appellants] are in occupation of a significant portion of the Property as can be seen from the Hippolyte

⁸ [1925] SCR 334.

Survey. The trespass continues unabated and therefore gives rise to a continuing action for as long as it lasts.

[191] [The respondent] is therefore entitled to damages for trespass. However, I note that while [the respondent] has claimed damages, they have not quantified their loss by providing any evidence of the rental value of the Property. In the circumstances, the Court may award nominal damages. Bearing in mind (i) that the 1995 letter indicated the rental sum of \$6, 141.66 per year; (ii) that it is now 15 years later; and (iii) the appreciation in the value of land, I am inclined to award a total sum of \$88,000.00, being the rental sum of \$8,000.00 yearly as damages for trespass.”

[38] As to the fourth remedy of an injunction, the learned judge considered that the respondent was *prima facie* entitled to injunctive relief based upon the court’s finding of trespass. The judge went on to consider whether she ought to award damages in lieu of an injunction and listed the factors which she took into consideration in deciding which way to exercise her discretion. The judge then concluded that the appellants’ breaches of the two injunctions, in particular, the 2009 injunction granted in the underlying claim in this matter, were several and flagrant, included expanding their occupation of the disputed land, and the resulting trespass to a significant portion of the respondent’s property, Parcel 227. The judge also found that the appellants had, in breaching the injunctions, ‘displayed audacious contempt for the Court’, which behaviour ought not to be countenanced.

[39] Having made findings of fact and conclusions of law, the learned judge made the following orders:

- “1. [The appellants] shall pay [the respondent] nominal damages for trespass in the sum of \$88,000.00.
2. [The appellants] shall at their own cost demolish and remove all structures including houses, fences, animal pods or any other structure whatsoever on Block 1020B Parcels 441, 444, 446 and 447 (“the Property”) and give up possession thereof, after the lapse of nine(9) months from the date of this judgment, UNLESS [the appellants] sooner purchase from [the respondent] at market value the occupied area as shown and determined by the lodged survey plan number VF2237T dated 20th august 2013 by Allan Hippolyte

("the Survey") subject to a valuation to be conducted by a valuer to be agreed by the parties.

3. The valuer is to provide a valuation of the market value of the area of the Property occupied by [the appellants] as shown and determined by the Survey.
4. The cost of the valuation is to be borne by [the respondent] and [the appellants] equally.
5. Should [the appellants] agree to purchase the occupied area as shown and determined by the Survey, [the appellants] shall demolish and remove all structures, whatever they may be, erected outside of that occupied area.
6. Should [the appellants] agree to purchase the occupied area as shown and determined by the Survey and the transaction would not be fully completed by the end of the nine (9) month period stated in paragraph 2, the parties are at liberty to apply to the Court for an extension of the nine (9) month period, prior to the expiration of that period.
7. In respect of any such portion of the Property not purchased by [the appellants] within the nine (9) month or any extended period granted, [the appellants] shall be restrained: (a) whether by themselves, their servants, agents or contractors or any other persons employed by them from constructing any type of building, fence or structure or undertaking any development as defined in the Physical Planning Act No. 29 of 2001; and (b) from brandishing any cutlass, gun or any tool, instrument, equipment or otherwise whatsoever and precluding [the respondent], its servants or agents or any person having the consent or authority of [the respondent] from entering and/or remaining on such portion of the Property.
8. Costs to [the respondent] on the claim and counterclaim to be assessed, if not agreed within 30 days of the date of this judgment."

Issues on Appeal

[40] The appellants being dissatisfied have appealed the judgment and orders dated 16th July 2020. In their amended notice of appeal (filed on 12th October 2020), the appellants challenge various findings of fact and of law made by the learned judge and set out 36 grounds of appeal. In the event that their appeal is successful, they seek an order of this Court cancelling the registration of the respondent as the proprietor of the disputed land; an order and/or declaration that they have an overriding interest under section 28(f) or (g) of the LRA in the

disputed land; an order that they be registered as owners with absolute title to the disputed land in accordance with the 2014 Hippolyte Survey; damages for trespass flowing from the wrongful granting of the interim injunction, including aggravated damages; restoration of the land; the payment of compensation by the respondent in the sum of \$1,027,254,050.81 for the unlawful destruction of the appellants' farm, structures, lands and livelihood; mesne profits; an order discharging the interim injunction granted (the 2009 Injunction); a permanent injunction restraining the respondent from interfering with the disputed land occupied by the appellants; an order that the respondent relocate and resettle the squatters whom they permitted to trespass on to the disputed land or, alternatively, an order that the squatters vacate the disputed land forthwith; interest on any sum which the Court may find to be due to the appellants upon final adjudication of this matter pursuant to Article 1009A of the **Civil Code**; costs; interest; and any further or other relief.

[41] Before this Court, Dr. Barnett, learned counsel for the appellants, focused the submissions for the appellants on certain main issues. He categorised one such issue, the evidence of the Chitolie family's long occupation and possession of the disputed land, as the 'crux' of the case. For the purpose of this judgment, I have distilled the following nine (9) issues from the 36 grounds of appeal and the appellants' oral and written submissions: -

- (1) Whether the learned judge, having found at paragraphs 76 and 93 of the judgment that the Chitolies were in occupation of the disputed land comprising Parcel 227 (now Parcels 441, 444, 446 and 447), erred in not concluding on the evidence, that the appellants and their ancestors have been in occupation and possession of the disputed land for over 100 years or at least to 1976 when the 1976 unlodged Augustin Survey was carried out, which survey the learned judge rejected as having no evidential value to her determination of any of the issues in the case?
(Chitolie Occupation Issue)

- (2) Whether the 2008 Deed of Transfer of 1020B Parcel 227 (and other parcels of land) from the SDC to the respondent was a voluntary transfer within section 27 of the LRA, and whether, by the terms of the said deed, the respondent's title thereto was expressly bound by or subject to the appellants' rights and interests as squatters on the said land? **(Voluntary Transfer Issue)**
- (3) Whether the recording officer's alleged failure during the Land Registration Titling Project ("LRTP") to return to the disputed land then in occupation by the appellants and to meet with them, amounted to a failure by the recording officer and/or the adjudication officer to discharge their statutory functions and duties under the LAA fairly, so as to constitute a 'mistake' in the adjudication and registration process entitling the appellants to an order for rectification of the Land Registers for the disputed land under section 140 of the LRA, and the cancellation of the registration of the respondent as the proprietor of Parcel 227? **(Mistake and Rectification Issue)**
- (4) Whether the failure by the appellants or any of them to claim the disputed land during the LRTP (whether by documentary or possessory title) or to avail themselves of the avenues of petitioning, reviewing and appealing under the LAA, before the adjudication section became final, disentitled the appellants, by way of counterclaim in this matter, from challenging and seeking the cancellation of the respondent's registered title to the disputed land? **(Failure to Claim Disputed Land Issue)**
- (5) Whether the learned judge erred in law in not concluding that the appellants' and their ancestors' rights and interests acquired as persons in actual occupation and possession of the disputed land prior to the LRTP in Saint Lucia, had given rise to a

possessory title to or overriding interest in the disputed land, which rights and interests were not, contrary to the judge's finding, extinguished by the first registration of the NDC as the proprietor of the original Parcel 46, and whether the respondent's title to the successor Parcel 227, acquired by the 2008 Deed of Transfer, was also subject to the appellants' existing unregistered occupational and possessory rights and interests? **(Effect of First Registration Issue)**

- (6) Whether the learned judge erred in law in not concluding that the appellants had, by virtue of the Chitolies' long occupation and possession of the disputed land, acquired and become entitled to overriding interests in the disputed land pursuant to the conjoint effect of sections 23(b), 27, and 28(f) and (g) of the LRA? **(Overriding Interest - Section 28(f) and (g) LRA- Issue)**
- (7) Whether the learned judge erred in law in failing to find that the appellants, by virtue of the Chitolies' long occupation and possession of the disputed land, had acquired a prescriptive title thereto constituting an overriding interest pursuant to section 28(g) of the LRA and Articles 2103, 2103A, 2106, 2112 and 2064 of the **Civil Code** entitling them to an order for rectification of the Land Registers and registration as the proprietors of the disputed land? **(Prescription Issue)**
- (8) Whether the learned judge erred in law in not finding that the appellants had, by the Chitolies' long occupation and possession of the disputed land, acquired an overriding interest in the said land by virtue of the limitation of actions and section 28(f) of the LRA? **(Limitation Issue)**
- (9) Whether the learned judge erred in not finding for the appellants and granting them the reliefs sought in their counterclaim, including a declaration that they are the owners entitled to

possession of the disputed land and an order for rectification of the Land Registers for the disputed land (Parcels 441, 444, 446 and 447) and damages? **(the Counterclaim Issue)**

[42] Issue 1, which is an issue of fact based upon the evidence adduced by both the appellants and the respondent (“the crux of the matter”), will be dealt with first. Issues 2, 3, 4, 5 and 6 are interrelated issues of mixed fact and law and may, conveniently, be taken together. The remaining issues: prescription, limitation and the appellants’ counterclaim, all issues of mixed fact and law, will be dealt with seriatim. However, before embarking upon a consideration of issue 1, it is convenient to summarise the historical record, now largely not in dispute, relating to the adjudication and registration under the LRTP of 1020B Parcel 46 (of which the disputed land Parcel 227 was part), pursuant to the conjoint effect and operation of the LAA and LRA. Similarly, because of its importance evidentially to the consideration and determination of the first or ‘key’ issue, the Chitolie’s alleged long occupation and possession of the disputed land, I consider it useful to examine the findings in the 2014 Hippolyte Survey and plan V2237T, which evidence remained undisputed before the learned judge, and informed her findings at paragraphs 76 and 93 of the judgment.

Adjudication and Registration of Parcel 46 (Parcel 227)

[43] It bears repeating that the land claimed by the respondent in these proceedings as Block 1020B Parcel 227 is part of the land first registered under the LRA as Parcel 46. It is not in issue that Parcel 227 was subdivided and mutated to create what are now Parcels 441, 444, 446 and 447. It is also no longer in dispute that Parcels 441, 444, 446 and 447 comprise, collectively, the lands in dispute between the appellants and respondent in these proceedings. Each of these four parcels are registered in the name of the respondent as the sole registered proprietor. The appellants’ case as first pleaded in their defence was that the land which they occupied was not the land registered as Parcel 227. However, in their 2016 Amended Defence and Counterclaim filed after the 2014

Hippolyte Survey, the appellants finally accepted that the land which comprised Parcel 227 had been subdivided and was currently registered as Parcels 441, 444, 446 and 447, and was the same land which they occupied and not a different piece of land.

[44] The history of the adjudication, registration, subdivision and transfer of the disputed land under the registered land system introduced by the LAA and LRA in Saint Lucia in the early to mid 1980s, may be conveniently summarised. The first registration of the disputed land under the LRA was as part of the land comprising Block 1020B Parcel 46, which original parcel was first registered in the name of the NDC as sole proprietor with absolute title on 23rd June 1987. The Land Register for Parcel 46 was first opened on 23rd June 1987. The land adjudication record for Parcel 46 is dated 13th January 1987. The Claim No. 6K-207 filed by the NDC by which it claimed ownership of the said land at Augier under the LAA, is dated 13th January 1987. The Demarcation Certificate for Claim 6K-207 is dated 11th November 1986. The original Land Register for Parcel 46 was closed on 26th July 1988 when the said land was subdivided by virtue of Mutation 264/88. One such resulting parcel was Parcel 227.

[45] Parcel 227 was transferred by NDC to the SDC by Deed of Transfer dated 22nd December 2006. Subsequently, Parcel 227 (said to be located at Retraite in the Quarter of Vieux Fort) was transferred (along with nine other parcels in Block 1019B) from SDC to the respondent by the 2008 Deed of Transfer registered at the Land Registry on 30th July 2008. The stated purpose for the transfer to the respondent of the 10 parcels (nine in 1019B and Parcel 227 in 1020B) effected by the 2008 Deed of Transfer, as acknowledged by both SDC (as “Transferor”) and the respondent (as “Transferee”) in the deed itself, was for ‘regularizing titles to those parcels of land currently occupied and further for vesting in The Transferee [NHC] the unoccupied parcels of lands for the purpose of housing development.’

[46] It is to be noted in passing, that the judge accepted the respondent's submissions that by the terms of the 2008 Deed of Transfer it was not estopped from bringing the claim against the appellants, 'as it and its predecessor, SDC, treated [the appellants] as trespassers and not as tenants, tenants at sufferance or squatters who recognized that they had no rights and were prepared to be either relocated or to purchase the land.' The judge also found that the 1995 Letter (written by NDC to Francis), the prior 2006 Claim and the 2006 Injunction (against Francis), 'shows that [the appellants] were not the type of occupiers being contemplated by the 2008 Deed.' At paragraph 97, the judge concluded: '[The appellants] claimed to have been the owners of the land so there could have been no regularization of title by NHC in relation to them.'

[47] In 2014, Parcel 227 was subdivided and mutated (No. 428/2014) to create a number of parcels including Parcels 441, 444, 446 and 447 (the disputed land). The Land Registers for each of Parcels 441, 444, 446 and 447 were opened on 11th December 2014 showing the respondent as the registered proprietor of each such parcel.

2014 Hippolyte Survey

[48] The 2014 Hippolyte Survey report and annexed plan V2237T were a central feature of the case in the court below. Together they formed the basis for the judge's findings at paragraphs 76 and 93 of the judgment as to the appellants being in occupation of the land comprising the disputed land. In his Report, Mr. Hippolyte stated:

"In compliance with the Mediation Agreement and Court Order in the High Court claim number SLUHCV2009/0263, the attached survey plan shows the whole of the Defendants [appellants] occupation of Obrier. The lands are bounded North by block and parcels 1021B 48-59. The North boundary was clearly demarcated with immortelles and iron pegs found. The South boundary is the same as is shown in the plan of survey by Mr. Augustin in his 1976 plan. I found monuments placed by Mr. Augustin located along the entire south boundary. The lands are bounded West by Ravine Rosette and East by the Petit Riviere du Vieux- Fort.

The Court Order required the representation of physical features on the Plan of Survey. There were a number [of] features measured at the time of the survey, and these are shown on the survey plan. Some of these features include fences around the entire boundary; for grazing animal control and cultivation located throughout the surveyed lands. A pre-demolition map produced by the Defendants was noted and is attached.

Some of these fences in the South were destroyed and broken, however, sufficient information was measured to be able to determine trajectories. Extensive cultivation was noted. Also noted were scattered livestock bones; piles of boulders; bulldozed topsoil piles and some galvanize and timber from demolished buildings. The animal pods were within the fenced areas and the location of demolished sheds were noted by the debris of wood and galvanize sheets throughout the surveyed lands. Photographs were taken of the physical features seen at the time of the survey and are attached to this report. **The Defendants [appellants] are in occupation of the whole of the lands surveyed and engaged in the farming and cultivation of all those lands.** I noticed extensive investments in structures for pigs and chickens in the southern area. The Defendants [appellants] indicated that the farming of livestock was extensive at the **south boundary** and not further north to prevent the foul odors from the animals from venting out to the St. Jude's hospital.

The surveyed lands is bounded East by the Petit Riviere du Vieux-Fort. The Vieux-Fort River is not shown on the survey plan and is located much further east and south of that land. **The lands surveyed are located in Augier 1021B & 1020B. This portion of land is also bounded in its entirety to the west by ravine and to the east by river. The Claimant's [respondent's] proposed development was made within the surveyed boundaries and within the areas fenced and occupied by the Defendants' [appellants] in the south; and also within the survey monuments of 1976 and 2013 at the southern boundary.**

The demolished area is covered by overgrowth and vegetation. It appears to have been abandoned. There are no roads, utility works, drainage, gutters or sewage works on the ground. There is severe erosion in the bulldozed area. To my knowledge none of the proposed lots have been sold or transferred by the Claimant at the Land Registry." (emphasis mine)

[49] The survey plan VF2237T shows a portion of land situated at the Augier Quarter of Vieux-Fort occupied by the appellants. It is noted on the survey plan under the signature of Mr. Hippolyte, that the survey was carried out between 15th July

2013 and 3rd August 2013 in the presence of Mr. Hugh Jankie, and Messrs. Jonah and Vance Chitolie, and that the survey plan was made pursuant to the terms of the Mediation Agreement and Court Order dated 20th June 2013. Mr. Hippolyte also notes on the plan the following:

“1. The boundaries of the land occupied by the Defendants [appellants] which form the northern part of the registered parcel 1020B 227 and bounded by Ravine Rosetta on the West and the Petit Riviere Du Vieux-Fort on the East. The land is bounded North by Immortelles Irons put and Block and Parcels 1021B 48-50; South by survey monument of licensed land surveyor, Vernon Augustin of 1976.

2. All physical features, i.e. houses, ponds, fences and relevant physical features of the Defendants. Fences, houses and other features were surveyed and shown **within the boundaries**; other features are shown in the survey report filed with the Court on March 27th, 2014.

3. All survey pegs and beacons placed by Surveyor, Vernon Augustin are shown in the South Boundary.

The hatched parcel **within the survey site** is a residential subdivision proposed by the National Housing Corporation and was lodged in the Survey Unit of the Ministry of Physical Development, Housing and Urban Renewal as plan numbers....”

Survey currently forms Block and Parcels 1020B 264-292, 294-310, & 313-398.

Survey also forms a part of Block and Parcels 1030B 140, 197, 293 & 436 and Block and Parcel 1219B 545.” (emphasis mine)

[50] It is clear from the 2014 Hippolyte Survey that the appellants were in occupation of a part and not the entirety of the land comprising Parcel 227. The appellants’ occupation was found to be in the northern part of Parcel 227 and consisted in 2013 of an area of land measuring 229.05 acres. This occupied area fell within both Block 1020B and the adjoining Block 1021B. This much is noted in the 2014 Hippolyte Survey and accompanying plan, and was confirmed by Mr. Hippolyte during cross-examination at the trial. Unsurprisingly, the 2014 Hippolyte Survey does not address the length of occupation of this area of land by the appellants and their predecessors. Neither was this issue canvassed with Mr. Hippolyte during his testimony. However, the evidence from the 2014

Hippolyte Survey was that in 2013/2014 the appellants occupied a large area of land on which there were concrete and wooden houses and other structures.

[51] The appellants' occupation of a part of the land comprising Parcel 227 and the pegs and markers placed by Mr. Augustin along the southern boundary of the area of Parcel 227 occupied by the appellants, were confirmed by both the report of Mr. Jack McKenna ("Mr. McKenna") dated 24th May 2011 ("the 2011 McKenna Report") and the 2014 Hippolyte Survey, as the learned judge recorded at paragraph 55 of the judgment. Importantly, the learned judge accepted that 'the Hippolyte Survey clearly shows that [the appellants] are in occupation of Parcels 441, 444, 446 and 447 formerly 227 and none of the parties have challenged that survey.' Also, the judge found that '[the appellants] have conceded, and the Hippolyte Survey confirms, and the [c]ourt therefore accepts and finds that [the appellants] are in occupation of the said Parcel 227 (now Parcels 441,444, 446 and 447).'

[52] Several issues of significance arise from the judge's finding that the appellants were in occupation of Parcel 227. These are:

- (i) what is the exact area of land occupied by the appellants?
- (ii) how much of the said area in their occupation in 2013 falls within Block 1020B and encompassed part of the lands comprising Parcel 227?
- (iii) for how long have the appellants been in occupation of that area of land as shown on the Survey plan V2237T;
- (iv) was the total area of land occupied by the appellants in 2013 the same or different from the area which Francis occupied in 1995 (33.5 acres) as mentioned in the 1995 Letter?

- (v) did the appellants expand the area which they occupied in 1995 and did they continue construction of the house and fence on the said land in breach of the 2006 Injunction and the 2009 Injunction?
- (vi) what was the nature, character, and extent of the appellants' occupation of the said area of land and were they in exclusive occupation of it?
- (vii) were the appellants in continuous, peaceable, open and uninterrupted occupation/possession of the disputed lands for a period in excess of 30 years?
- (viii) have the appellants acquired an overriding interest in the disputed land or a part thereof by virtue of them being in actual occupation or by prescription under and by virtue of the provisions of the **Civil Code**?
- (ix) were the appellants in occupation of the disputed land or a part thereof during the period of the LRTP in the mid to late 1980's in Saint Lucia?
- (x) were any possessory rights acquired or in the process of being acquired by the appellants and the Chitolie family as a result of such occupation, interrupted by NDC claiming in the 1980's the said land under the LAA and its registration as the proprietor of Parcel 46 in 1987, or by the 1995 Letter from NDC to Francis, or by the 2006 Claim and 2006 Injunction by NDC, or by a letter dated 22nd December 2008 from the lawyers for the respondent to Francis demanding that he immediately stop the construction of a concrete fence 'around a concrete structure wrongfully erected' on Parcel 227 ("the 2008 Letter")? and
- (xi) did the appellants lose their right to claim a possessory title or other rights arising by virtue of their actual occupation of the disputed land or part thereof, which right or interest they had acquired or were in

the process of acquiring at the time of the LRTP in Saint Lucia, by not claiming the disputed land, or the land which they then occupied, under the LAA, and not have availed themselves of the statutory avenues of petition, review or appeal under the LAA, such that it was not now open to them to challenge or to seek rectification of the respondent's registered title to the disputed land by way of counterclaim in these proceedings?

Issue 1 – Chitolies' Occupation of Disputed Land
Appellants' Submissions on Issue 1

[53] Dr. Barnett submitted that the undisputed evidence before the court below was that the Chitolies have been in occupation of the disputed lands for over 100 years. He contends that the evidence is all one way, and there is no evidence to the contrary. No witness has come forward to say that the Chitolies were not in physical occupation of the whole of the disputed land. While there were mere suggestions or references to other persons being in occupation or squatting on part of the land, no evidence of such occupation has been provided. Specific reliance was placed by the appellants on the judge's finding of physical occupation by the appellants of the disputed land at paragraphs 76 and 93 of the judgment, and on the 2014 Hippolyte Survey and plan V2237T showing the extent of the appellants' occupation of the disputed land. Accordingly, the appellants argue, the physical occupation of the disputed land by the Chitolies has been confirmed by independent evidence.

[54] In oral submissions, Dr Barnett also pointed to other evidence confirmatory of the Chitolies occupation of the disputed lands. Counsel referred to the 2011 McKenna Report. I observe that the 2011 McKenna Report contains a number of inaccuracies, incorrect information and conclusions, including conclusions of law, as it relates to the effect of the LRTP and land adjudication process leading up to the first registration of Parcel 227, which it is accepted comprises an area of land originally part of Parcel 46, and was the result of the mutations of Parcel

46. The appellants seem to have accepted this as the correct position in their 2016 Amended Defence and Counterclaim. Indeed, Dr. Barnett in his oral submissions, took the position that this is so irrespective of the different local names used by the parties in their pleadings to describe the location of the disputed land.

[55] As regards the appellants' occupation of the disputed land, the 2011 McKenzie Report states:

"The area of land in actual occupation by the Defendants [appellants] is consistent with the north, west and east boundaries as stated in the deeds of title of Obrier and the south boundary as identified by the Defendants to be at the intersection of the Grande Riviere du Vieux-Fort and the Vieux-Fort River. This is exhibited on the map sheets and topographical sheets of 1021B and 1020B **as Exhibits marked SGS 7 and SGS 8. We noticed the iron survey pegs along the south boundary from the unregistered survey pegs of 1976 by licensed land surveyor, Vernon Augustin.** The south boundary as defined by the survey pegs is the boundary that the Defendants and their predecessors have known." (emphasis mine)

[56] Dr. Barnett submitted that in essence, the relevance of the 2011 McKenna Report is that it confirms that the area of the disputed land then in the occupation of the appellants falls within both Block 1020B and 1021B; that the said land is bounded to the south by the intersection of the Grande Riviere du Vieux-Fort and the Vieux-Fort River; and the southern boundary is defined by survey pegs said to have been placed there by Mr. Augustin in 1976 and shown on the 1976 unlodged Augustin Survey as delineating the area of the disputed land occupied by the appellants at that time in 1976.

[57] Counsel for the appellants also pointed to the testimony of Mr. Faisal, the managing director of the respondent, as evidence from the respondent itself of the appellants' occupation of the disputed land. Reference was made to the cross-examination of Mr. Faisal during which he admitted he was aware that the appellants were in occupation of, and that they lived on, cultivated, and had livestock on the disputed land; and that their occupation spanned decades.

- [58] Reference was also made to the appellants' pleaded case of occupation of the disputed land at paragraphs 40 to 44 of the 2016 Amended Defence and Counterclaim; and to paragraphs 4, and 5 to 11 of the witness statement of Jonah Chitolie where he gives a historical account of the Chitolies' occupation of the disputed land, going back to his great grandfather, Chitolie Coolie (a.k.a. Chitolie Indian) living on the said land from before the 1906 survey and his 1911 purchase (as evidenced by the 1911 receipt). The appellants contend that their occupation of the disputed land has not been denied but was admitted by the respondent in its Reply and Defence to Counterclaim.
- [59] In summary, the appellants submitted that the evidence of their occupation of the disputed land and that of their ancestors going back several generations remained uncontradicted, and has been confirmed by the respondent in its pleaded case and evidence at trial. It was stressed that the use in the pleadings and in the evidence of popular names in Saint Lucia (such as La Ratraite, Obrier and Augier) to identify the location of the disputed land, while they may have created some confusion in the court below, these names were in reality not important to the proper determination of what land the appellants and their family have been and were actually occupying, or the physical boundaries of that land. The essence of the appellants' pleaded case and evidence adduced was that they and their family have occupied the disputed lands for generations going back over 100 years, which land comprises what was 1020B Parcel 227 (and is now 1020B Parcels 441, 444, 446 and 447). Further, any confusion surrounding the use of popular names completely disappeared with the 2014 Hippolyte Survey which showed conclusively the exact land and area of land which the appellants have occupied, lived and worked, that is Parcel 227.
- [60] Counsel for the appellants also submitted that there was no finding by the judge that the appellants were not in occupation or possession of the disputed land. To the contrary, the judge found that they were in occupation of the whole of the disputed land. However, in error, they argued the judge went on to find, contrary

to the undisputed evidence in the case, that the appellants' possession of the said land was unlawful. This finding was made erroneously in the face of the uncontroverted evidence to the contrary showing the source and commencement of the Chitolies' occupation. In this regard, counsel for the appellants submitted that the evidence before the learned judge clearly showed that the appellants occupied a much greater area of land than the 5.5 carres conveyed by Sydney Melville to Chitolie Coolie by the 1911 Deed (dated 9th September 1911). I merely observe that this is the same deed on which the appellants relied when making claim No. 6K-271 dated 24th January 1987 under the LAA, with respect, not to 1020B Parcel 46 or 227, but to the land comprising 1022B Parcel 37. However, it is pellucid from the evidence before the court that the land comprising Parcel 37, being part of Block 1022B, was not part of the disputed land Parcel 227 occupied by the appellants as shown and described in the 2011 McKenna Report and the 2014 Hippolyte Survey, upon which report and survey the appellants relied.

Respondent's Submissions on Issue 1

- [61] Mrs. Jeffrey-Nelson, disputes the main plank of the appellants' case that they had established, and the learned judge ought to have accepted on the undisputed evidence before the lower court, that they and their ancestors had been in continuous occupation and possession of the disputed land, going back four generations, for over 100 years. The respondent submitted that the judge was correct in her assessment of the witnesses and evidence and in her various findings of fact on the important issues before the court, including the finding that the Chitolies' occupation commenced in 1991 based upon the 1995 Letter.
- [62] The respondent relies on the well-established and oft cited principles governing appellate restraint when invited to set aside findings of fact made by a trial judge, who has had the distinct advantage of having seen and heard the witnesses give their evidence during the unique atmosphere of a contested trial. They submit that the appellants have not demonstrated that the trial judge has

abused or failed to make appropriate use of this advantage, in making her findings with regard to the appellants' occupation of the disputed land. Likewise, the respondent submits, the appellants have not demonstrated that the trial judge committed errors of principle or law or omitted to take into account relevant facts or that her findings on this or any issue of fact were plainly or blatantly wrong or exceeded the generous ambit within which reasonable disagreement is possible. In support of these submissions, the respondent cited several authorities. These include **Industrial Chemical Co. (Jamaica) Ltd v Ellis**;⁹ **Golfview Development Limited v St. Kitts Development Corporation**; **Michael Simanic**;¹⁰ and **Bradford Noel v First Caribbean International Bank (Barbados) Limited**.¹¹

[63] The respondent relies on these well-established principles in relation to a number of findings of fact made by the trial judge, and not just her findings as to when the appellants' occupation of the disputed land commenced. As to the latter, the respondent refers specifically to the judge's finding that the appellants had failed to comply with the 2006 Injunction to stop construction of a house and a fence on the disputed land, and her finding that they had expanded their occupation despite the injunction and the 1995 Letter, all of which they contend were amply supported by the documentary evidence before the court. In summary, the respondent submitted that the facts which the appellants seek to challenge in their amended notice of appeal 'are irrebuttable facts steeped in law and evidence documentary and oral which remain uncontroverted.' They submit, accordingly, that there is no basis upon which this Court ought to interfere with these findings of fact by the learned judge.

[64] It is the case for the respondent that the evidence of the appellants' occupation of the disputed land is not uncontroverted, as they contend. The respondent referred to the 1995 Letter from the NDC (the respondent's predecessor in title)

⁹ 1986) 35 W.I.R. 303.

¹⁰ [2007] ECSCJ No. 90 (delivered 20th June 2007).

¹¹ [2009] ECSCJ No. 30 (delivered 23rd March 2009).

to Francis Chitolie with regard to his 'illegal' occupation of 33.5 acres of land at Aubrier 'since March 1991'.

- [65] Mrs. Jeffrey-Nelson referred to the 1911 Deed by which Sydney Dazelle Melville, as attorney for Mary Josephine Melville, sold and conveyed 5.25 carres of land situate at Augier to Chitolie Coolie for the consideration of 26 pounds five shillings sterling. This land comprises the land now registered as Parcel 37 in the name of the heirs of Stephen Chitolie. It is shown to be located to the north of the disputed land. It is not in dispute that this conveyance to Chitolie Coolie in 1911 was one of several dismemberments of lands owned by Mary Josephine Melville, the title to which dates back to 30th November 1906.
- [66] The respondent also referred to the decision of Edwards J (as she then was) in **Francis Chitolie a.k.a. Catchel v Theresa Vitalis and Paul Merkey Chitolie**¹² ("the 2005 case") in which Justice Edwards ruled that 'based on the [1911] Deed of Sale that the parties had relied on, Chitolie Coolie never had ownership of the land in question' The respondent argued this ruling contradicts the appellants' case of physical occupation of the entirety of the disputed land.
- [67] In this 2005 case, the claimant, Francis Chitolie, ("Francis") and the defendants, Theresa Vitalis and Paul Merkey Chitolie, are siblings and all children of Stephen Chitolie, whose father was Chitolie Coolie. The dispute in the 2005 case related to the land comprising 1022B Parcel 37 which had been registered under the LRA in the name of the 'Heirs of Stephen Chitolie'. In brief, Francis sought, *inter alia*, a declaration that he is the sole owner of 1022B Parcel 37 entitled to be registered as the sole proprietor thereof. At paragraph 14 of the judgment in the 2005 case, the judge recites that the said land (now Parcel 37) 'was acquired by Chitolie Coolie on the 9th September 1911 by Deed of Sale from Sydney Daizelle Melville' (the 1911 Deed). At paragraph 76, Justice Edwards held: 'In the absence of any partitioning, Stephen Chitolie was the sole

¹² Claim No. SLUHCV 2005/0375 (delivered 30th April 2007).

owner of the property [Parcel 37] after the death of his 2 brothers on the facts and law of St. Lucia.' Accordingly, the judge concluded that Francis' statement of case cannot be sustained as a matter of law. Accordingly, she refused to permit the claim to proceed since, in the judge's view, her preliminary ruling had determined the whole case, and the claim should be dismissed.

[68] I merely observe that the 2005 case dealt mainly with issues surrounding the devolution of ownership of land under the **Civil Code**, and not with rights acquired by occupation or long possession. However, the judgment in that case (which apparently was not appealed) determined that Francis was not entitled, to the exclusion of his siblings, to ownership of 1022B Parcel 37, and the registration of that parcel in the name of the Heirs of Stephen Chitolie could not be disturbed.

[69] Reliance was also placed by the respondent on the evidence of Mr. Lester Martyr, a lawyer and licensed land surveyor, to show that the land comprising Parcel 37 is different from and is not the disputed land which comprises Parcel 227. Mr. Martyr provided a witness statement, and an expert report dated 28th February 2011 ("the 2011 Martyr Report"). In that report, Mr. Martyr states: 'It is not in question that the disputed area occupied by the defendants and shown on LM10 forms part of the registered parcel 1020B 227' (para. 12). Importantly, in the conclusion section of his report, Mr. Martyr declared that the area of land 47 carres which is referenced in the 1911 Deed of Deposit of Receipt and the 1976 contract between Stephen Chitolie and Francis Chitolie (LMB), 'is the same as the areas annotated as Augier No. 23 and Augier No. 24', and 'is the only portion that was capable of being sold by Sydney J Melville acting as Attorney for his wife Mary J Melville born Goodman, under the Declaration'. Mr. Martyr also concluded that the said land, Augier No. 23 and Augier No. 24, '**is geographically different and separate from the area identified on the same plan as Deglos No. 19B**', within which latter area the disputed land falls. Accordingly, Mr. Martyr concluded his report in these terms -

“The disputed area shown on the plan of survey prepared by the late Licensed Land Surveyor Vernon Augustin (LM10) falls within Deglos No. 19B and **is not located within the areas annotated as Augier No. 23 and Augier No. 24**. As noted earlier **the disputed area falls within the registered land parcel 1020B 227** for which the current registered proprietor is the Claimant in this matter.” (emphasis mine)

- [70] Counsel for the respondent also relied on the adjudication record for Parcel 37 evidencing the claim by Francis Chitolie to the lands which were mentioned in the 1911 receipt and in the 1911 Deed.
- [71] The respondent was critical of the authenticity of the deed of deposit dated 5th June 2009 (the “2009 Deed of Deposit”), by which the appellants purported to ‘deposit’ a written agreement dated 19th July 1976 (“the 1976 Agreement”) and the 1911 receipt, several months after the claim in this matter had been commenced on 11th March 2009. The 1911 receipt purports to evidence a sale by Sydney Melville, on behalf of Mary Melville, of 47 carres of land in Aubrier to Chitolie Coolie for an amount of money allegedly paid by Chitolie Coolie (26 pounds 5 shillings), which is the identical sum of money which was paid for the 5.25 carres of land the subject of the 1911 Deed (which land was registered as Parcel 37 in the name of the Heirs of Stephen Chitolie). Counsel for the respondent also pointed out that the sale of the 5.25 carres of land was formalised by the 1911 Deed, whereas the alleged sale of the 47 carres of land the subject of the 1911 receipt was never formalised or evinced by any deed or conveyance. This is said to be the same land which, in 1976, was purchased by the first appellant, Francis Chitolie. The respondent submits that the 1911 receipt is a highly suspicious document produced some 98 years after it was allegedly issued.
- [72] The second document ‘deposited’ is the 1976 Agreement (made 19th July 1976) by which Stephen Chitolie conveyed his interest in 200 acres of land (more or less) ‘situate at Obrea or Obrier at Augier’ to Francis Chitolie AKA Catchel in consideration of the sum of \$500. This agreement surfaced some 33 years after

it was made. The Court's attention was drawn specifically to the last paragraph of this written agreement which recites that:

“the said Obrea was acquired by Chitolie Coolie from Sydney Melville in receipt of purchase dated 09th September, 1911 and registered in deed of sale by Sydney Melville to Chitolie Coolie dated 09th September 1911 in Volume 68 Number 3423 at the Registry of Deeds and Mortgages...”.

This is a clear reference to the 5.25 carres of land the subject of the 1911 Deed, which deed was submitted by Francis as proof of title and ownership to the land registered as Parcel 37, not Parcel 46 or Parcel 227. It is also a clear reference, as part of the chain of title to the land being conveyed by the 1976 Agreement, to the 1911 receipt which evinces the payment of the same purchase price of 20 pounds 5 shillings as the 1911 Deed but for 47 carres and not 5.25 carres of land.

[73] The respondent submits that the 1911 receipt is dubious at best and is not supported by any other evidence. They also submit that there was no transfer of 47 carres of land to Chitolie Coolie; and the 1911 Deed evinces the sale and conveyance to Chitolie Coolie of only 5.25 carres of land, which land is not part of the disputed land and is registered as Parcel 37. They refer to the evidence of Lester Martyr and the 2011 Martyr Report which shows that the lands of Sydney Melville, which were sold off systematically, were located to the north and were not part of the land comprising Parcel 227, and thus not part of the disputed land.

[74] In summary, the respondent submits that the evidence of occupation of lands by the Chitolie family going back several generations commencing with Chitolie Coolie when he acquired 5.25 carres of land by virtue of the 1911 Deed (over 100 years ago), was of land in an area to the north of, and different from and not part of the disputed land. Accordingly, the evidence adduced by the appellants before the judge does not establish that the appellants and the Chitolies were in occupation of the disputed land going back several generations or for over 100 years, as they contend. To the contrary, the first

evidence of occupation of any part of the disputed land by the appellants was in 1991, as was stated in the 1995 Letter from the NDC to Francis Chitolie complaining of his trespass on to the disputed land from 1991. This alleged trespass in 1991, was well after the LRTP in Saint Lucia had been completed and the disputed land (then part of Parcel 46) adjudicated to and registered in the name of the NDC.

- [75] The fact of commencement of the appellants' occupation of the disputed land, the respondent contends, was accepted by the learned judge and the evidence to that effect was uncontroverted. Accordingly, it was submitted that it was not open to this Court to find in the face of such evidence that the appellants and their family had been in occupation of the disputed land prior to 1991. As will be made clear later on, the inherent difficulty with this contention is that the unlodged 1976 Augustin Survey was of land then said to be or found to be occupied by Francis and the Chitolie family, which land is part of the land comprising the disputed land.

Analysis and Conclusion on Issue 1

- [76] At paragraph 101, the judge summarised the respondent's position on the question of the appellants' alleged physical occupation of the disputed land in these terms: -

"NHC [the respondent] submits that if the defendants [appellants] were in occupation during the LRTP, they never claimed the Property either by documentary or possessory title. Their occupation is not noted on the demarcation certificate; neither was there a dispute in relation to the Property nor a competing claim put in by them. Francis is using the very same title of his grandfather, Chitolie Coolie that he used to claim Block 1022B Parcel 37 as the basis of his claim to title to the Property. The receipt of purchase on which the defendants [appellants] rely only materialized in 2009 after the claim was filed and was never used by Francis to claim Parcel 46 or dispute NDC's claim to it. NDC therefore contends that the defendants [appellants] could not have been in occupation at the time of the LRTP and must have commenced their wrongful occupation in 1991 as stated in the 1995 letter from NDC to Francis."

[77] The learned judge stoutly rejected the contention by the appellants that the 1911 receipt (registered along with the 1976 Deed in the Registry of Deeds and Mortgages in 2009), is a document of transfer or conveyance of title to real property. Accordingly, it cannot and does not convey title in real property to Chitolie Coolie or to the appellants. Furthermore, the judge held that neither the 1911 receipt nor 1911 Deed nor the 1976 Deed can be of any legal effect post the LRTP. Dr. Barnett did not seek to challenge any of these conclusions before this Court which, as a matter of law, are in my view correct and inviolable.¹³

[78] However, as mentioned before, the appellants also rely on the 1976 unlodged Augustin Survey as evidence of their occupation of the disputed land, as well as the findings in the 2014 Hippolyte Survey, in which latter survey certain boundary markers placed by Mr. Augustin in 1976 (40 years before) were found and acknowledged. The appellants also rely on the 2011 McKenna Report as evidence consistent with and confirmatory of their occupation of the disputed land (or a part thereof) and of the boundary markers and pegs placed by Mr. Augustin in 1976, particularly those found delineating the southern boundary of the land which the appellants and the Chitolie family have occupied. In this vein, Dr. Barnett takes issue with the judge's conclusion as to the non-evidential value of the unlodged 1976 Augustin Survey. At paragraph 109 the learned judge had this to say:

“In relation to the unlodged Augustin Survey, it is clear that it has no legal effect. Mr. Hippolyte in cross examination admitted that Mr. Augustin's 1976 survey was unlodged and went further to say that an unlodged plan is useless. **It in any event does not advance the defendants' [appellants'] case as it does not go to proof of any of the essential issues in the case.**” (emphasis mine)

[79] In my judgment, there is some force in Dr. Barnett's criticism of the judge's treatment, evidentially, of the unlodged 1976 Augustin Survey at paragraph

¹³ See: *Ulina Jennifer George v Hilary Charlemagne* [2003] ECSCJ No. 33 (delivered 3rd April 2003).

109 above of the judgment in simply accepting Mr. Hippolyte's evidence that an unlodged plan is 'useless', and in completely disregarding the unlodged 1976 Augustin Plan as evidence of the appellants' occupation of that portion of the disputed land comprising Parcel 227 going back, at least, to 1976. The reference in the quoted passage to the evidence of Mr. Hippolyte given in answer to a question in cross-examination concerning the authenticity of the unlodged 1976 Augustin Survey plan, is correctly cited by the judge. It is also correct that the unlodged 1976 Augustin Survey Plan is an unauthenticated plan having not been lodged with the Chief Surveyor (Mr. Augustin having apparently passed away suddenly). However, in my judgment it was patently incorrect for Mr. Hippolyte to categorize, and for the learned judge to accept, that the unlodged 1976 Augustin Survey is entirely 'useless'. It was also incorrect for the learned judge to conclude that the unlodged Augustin Survey does not go to proof of any of the essential issues in the case. The effect of the unlodged 1976 Augustin Survey plan not having been lodged with the Chief Surveyor is that the said survey plan cannot be accepted as an authenticated plan conclusive as to the matters which it purports to address and to depict. This does not lead, in the particular circumstances of the evidence in this case, to a conclusion that the said survey plan is entirely useless and of no evidential value concerning the important issue of the appellants' occupation and possession of a portion of the disputed land. In my judgment, the unlodged 1976 Augustin Survey is relevant and cogent evidence going to the important issue in the case of the area of land occupied by appellants in 1976. I so conclude because certain aspects as depicted on the unlodged 1976 Augustin Survey have been corroborated and verified by subsequent authenticated survey plans of the land occupied by the appellants.

- [80] Such independent and cogent evidence confirmatory of important aspects of the unlodged 1976 Augustin Survey was before the court below in the form of both the 2011 McKenna Report and the 2014 Hippolyte Survey. In simple terms, certain of the material facts of occupation, boundaries and monuments

referenced in the unlodged Augustin Survey relevant to the issue of occupation and possession of a portion of the disputed land by the appellants and the Chitolie family, were confirmed and authenticated by both the 2011 McKenna Report and the 2014 Hippolyte Survey. These include, importantly, the description, boundaries and delineation of the approximate area of land which the appellants and their family were occupying in 1976, as shown and stated in the unlodged Augustin Survey. The description in the unlodged Augustin Survey comports with the description and delineation of the land in the appellants' occupation as found and confirmed by Mr. McKenna in 2011 and by Mr. Hippolyte in 2014 (as shown on plan V2237T). Both Mr. McKenna and Mr. Hippolyte in their respective surveys, found, showed, used, referenced and relied upon certain of the boundary markers and pins placed by Mr. Augustin in 1976 delineating the northern and, to a larger extent, the southern boundary of the land then occupied by the appellants. Furthermore, both the McKenna Report and the 2014 Hippolyte Survey are confirmatory of the presence in the northern part of Parcel 277 of the Chitolie houses. In these material particulars, both the 2011 McKenna Report and the 2014 Hippolyte Survey constitute independent and cogent evidence of the accuracy of important aspects and depictions in the unlodged 1976 Augustin Survey prepared some 35 and 38 years earlier respectively.

- [81] In my judgment, the 2011 McKenna Report and the 2014 Hippolyte Survey constitute evidence confirmatory of the Chitolie occupation of a portion of the disputed land Parcel 227, as far back as 1976, as was shown on the unlodged 1976 Augustin Survey. In this respect, the evidential value of the 1976 unlodged Augustin Survey is not, in my view, undermined by Mr. Hippolyte's observation in evidence that he found certain errors in the unlodged 1976 Augustin Survey. One such error which he noted in his evidence was Mr. Augustin's gross under-sizing of the actual area of the land which he had surveyed. As Mr. Hippolyte pointed out during examination-in-chief, the unlodged 1976 Augustin Survey showed the area as 181 acres, whereas he

(Mr. Hippolyte) shows it as 229 acres on plan V2237T. However, it is manifest that such 'errors' in the unlodged 1976 Augustin Survey do not go to undermine the fact of occupation by the appellants of part of the disputed land Parcel 227 or the description and boundaries of the area of land then found to have been occupied by them, and the position of their houses to the north of the said area.

[82] In the premises and for the reasons stated above, I find that the learned judge erred in not taking into account the unlodged 1976 Augustin Survey as evidence of the appellants' or Francis' occupation of an area of the disputed land Parcel 227 at that time and the erection thereon of a house to the northern part of Parcel 227. This was cogent evidence of occupation at least as far back as 1976 of an area of what subsequently became Parcel 227 under the LRA. In the face of this evidence the learned judge ought to have made a positive finding that the appellants (or at least Francis) was in occupation of a part of the disputed land Parcel 227 in 1976 and was living on that area of land. This evidence is supported by the 2011 Mckenna Report and the 2014 Hippolyte Survey and is consistent with the findings of occupation in these subsequent reports and surveys.

[83] At paragraph 137 the learned judge encapsulated the respondent's position on the appellants' occupation of the disputed lands in this way:

"The only independent evidence of when the defendants [appellants] entered into possession can be gleaned from the 1995 letter which said they were occupying the lands from 1991. The defendants [appellants] have therefore not been in possession for 30 years nor have they been in sole, exclusive and undisturbed possession of the Property. There are at least 88 other families on the Property and NHC has displaced and relocated the families who were in occupation by surveying, renting and commencing the St. Jude's East Gardens Development. The defendants [appellants] never sought to assert their rights as owner to preclude NHC [respondent] or its servants or agents from entering the Property. The defendants [appellants] never took any action against NHC [respondent] or its predecessors or any of the persons who occupied the land. They never made a formal complaint against NHC's [respondent's] alleged entry onto the Property and

damage to animals and the farm, and only raised this in the last of the many defences filed.”

[84] However, the learned judge did not make a finding as to when the appellants’ occupation of the disputed land commenced. The learned judge did not accept the respondent’s contention that the 1995 Letter, specifying a commencement date of 1991 for Francis’ occupation of 33.5 acres of the disputed land Parcel 227, was conclusive proof of the date of commencement of the appellants’ occupation. The judge also did not accept that the 1995 Letter constituted or could be construed as a ‘judicial demand’ having the legal effect of interrupting the period of possession for the purposes of acquiring a prescriptive possessory title to the disputed land. Instead, the judge was content to decide the issue of a prescriptive title on the basis that even if the 1991 date was accepted evidentially, the appellants would not have been in occupation of the disputed land for the requisite 30-year minimum period necessary to acquire a prescriptive title prior to the 2006 Claim and 2006 Injunction, and the first registration of NDC as proprietor of Parcel 46.¹⁴

[85] The 1995 Letter is part of the documentary evidence in the case which pointed to a possible date when the appellant’s occupation of part or parts of the disputed land had commenced, and the area of Parcel 227 which Francis then occupied being stated in the said letter to be 33.5 acres. The 1995 Letter is also evidence that in 1995 Francis was claiming the property which he then occupied (33.5 acres) as his property, and had sought to exclude others, including the staff of the NDC, from coming onto the said land. The 1995 Letter does not specify the acts of occupation of the 33.5 acres or whether buildings or structures had been or were in the process of being built or constructed on the area of land then in occupation by Francis. However, it is clear from the unlodged 1976 Augustin Survey that a house or building was on the occupied land. It is also clear from the 2006 Claim and 2006 Injunction that construction

¹⁴ See paragraphs 168 and 169 of the judgment below.

of a building was on-going on the occupied land, and it was averred by the NDC that in or around June 2006 Francis had 'entered onto the property and occupied the said property for the purposes of farming and has commenced construction of a concrete structure on the said property...'. However, in my judgment, in the face of the other cogent evidence at trial, it would be fundamentally wrong in principle to elevate the 1995 Letter evidentially, without more, to the level of being proof to the requisite civil standard, of the date of commencement of the appellants' occupation of the disputed land. In short, the statement in the 1995 Letter as to Francis' commencement of occupation in 1991 does not equate with the unlodged 1976 Augustin Survey, aspects of which, as dealt with above, have been verified by both the 2011 McKenna Report and the 2014 Hippolyte Survey.

- [86] Furthermore, it is not correct to characterise the 1995 Letter and its reference to the appellant Francis Chitolie's occupation commencing in 1991, as 'independent' evidence of the appellants' entry into possession of the disputed land, as was asserted by the respondent. This is a letter emanating from the respondent's predecessor in title to Parcel 227, the NDC, the then registered proprietor of Parcel 46. Moreover, the statement in the said letter as to the appellants' occupation commencing in 1991 was not substantiated by other evidence at the trial. Mr. George Lawrence, the then manager of the NDC, who penned the 1995 Letter, was not called as a witness. Mr. Faisal, one of the witnesses for the respondent, gave no evidence, either in his witness statement or in oral testimony, supportive of the statements in the 1995 Letter as to when Francis' occupation commenced. In fact, on several occasions during cross-examination, Mr. Faisal made clear that while, as an agriculturist, he was familiar with the various areas in and surrounding the area in which the disputed land is located and with their respective local names, he had little first-hand knowledge and familiarity with the disputed land itself or with the fact and extent of the appellants' occupation of parts of it. In several instances, he made

clear in answer to questions, that he was relying and acting on what he had been informed or made aware of by others.

[87] The February 2011 report of Mr. Ronald Polius, a licensed surveyor engaged by the respondent to prepare a survey report on the location of a house on a portion of the disputed land (“the 2011 Polius Report”) is, in my judgment, further independent evidence confirmatory of the appellants’ then occupation of parts of the disputed land, and the fact that they had at least two concrete houses located to the northeast part of the said land comprising Parcel 227, as shown on the survey plan annexed to the said report. The 2011 Polius Report and survey plan are therefore consistent, in some material respects, with the independent evidence from the 2011 McKenna Report and the 2014 Hippolyte Survey, and the unlodged 1976 Augustin Survey plan, as to the appellants’ occupation of a large part of the disputed land Parcel 227 going back several decades. These various reports and surveys are, collectively, consistent and cogent evidence of the appellants’ occupation and possession of a portion of the disputed lands going back to at least 1976, before the LRTP in Saint Lucia.

[88] However, the judge was not satisfied and did not accept that the appellants have produced evidence of the Chitolies’ occupation of the disputed land for over 100 years, as they contend. The main source of the appellants’ evidence at trial as to the Chitolies’ occupation and possession of the disputed land comes from Mr. Jonah Chitolie. He is a farmer by occupation, who gave evidence as the legal representative of his father Francis and his brother Vance Chitolie. Jonah provided an amended witness statement on 12th September 2016 in which he detailed the history of the Chitolies’ occupation and possession of ‘a portion of lands called Obrier a.k.a. Aubrier or Obrea or Aubrea situated at Augier in the Quarter of Vieux-Fort’, which occupation he attested commenced with his great grandfather, Chitolie Coolie, since 1903, a period well before his birth.

[89] In his witness statement, Jonah provided some evidence of the acts of occupation and possession by his grandfather, his father, and by he and his brother Vance. These acts included establishing several dwelling-houses on the land, which houses were occupied by family members. One such dwelling-house was an 'estate house' which he testified has been in the family since 1911. It was initially a wooden structure which subsequently 'was renovated to a concrete structure' after it had been destroyed by termites. Other acts of alleged occupation and possession included the cultivation of crops such as rice, cassava, cashew nuts, coconuts, and the making of charcoal, copra 'in the early days.' The cultivation of crops was continued by his family (Francis' family). Additionally, Jonah gave evidence of livestock farming involving cattle, goats, pigs, sheep, poultry and horses on the land, and the establishment of 10 animal pods. He also gave evidence that the 'entire lands are properly fenced with iron gateways and padlock.'

[90] Jonah's evidence is that his father Francis was born on the land in 1941 and was himself raised there. Francis in turn raised his own family of nine (9) children on the land. At paragraph 10, he attested that, '[f]ive (5) successive generations have been living on the land and have been engaged in farming and cultivation of the land and deriving their livelihood and main source of income from the lands.'

[91] Jonah was cross-examined at some length by counsel for the respondent. When counsel for the claimant put the 1995 Letter to him stating the Francis had been illegally occupying 33.5 acres of the disputed land since 1991, he disagreed. He testified that he knows the disputed land to belong to his great grandfather, Chitolie Coolie, who 'bought it from Melville'. However, when the 1911 Deed and the claim form for Parcel 37 were brought to his attention and it was put to him that his father, Francis Chitolie, always knew that his interest was in 5.25 acres of land which land was registered as Parcel 37, Jonah responded: 'I cannot answer that.' Likewise, he did not know that his father

Francis had been a claimant in the 1995 case with respect to Parcel 37. As to whether the concrete house was built on the land comprising Parcel 227 only in the year 2006, Jonah testified that 'was to renovate the old wooden house that was there already.'

[92] Jonah also testified that he agreed with the 2014 Hippolyte Survey plan 'because it's same exact land we occupy and we on'. He was unable to confirm whether the appellants were relying on the 1911 receipt as evidence of Francis' ownership of the disputed land Parcel 227. He accepted that the first appellant's (Francis') house with the fence around it is in the north of the disputed land. When cross-examined as to the presence of other people living on and cultivating the disputed land, Jonah eventually said: 'I don't know the people on the land, all I know is there are people on the land'. Importantly, when it was put to Jonah in cross-examination that the Chitolie family were never in occupation of the southern part of the disputed land, which is the portion of the land which was excavated by the respondent to accommodate the housing development project, but were only occupying an area in the north of the land, Jonah responded: 'We occupied the entire land; We have the whole land [in] possession. Its fenced ...'.

[93] There is no cogent evidence of the Chitolie occupation of the entirety of the land comprising the disputed land. This is not borne out by the 1995 letter (33.5 acres occupied) or the unlodged 1976 Augustin Survey or 2011 Polius Survey Report or the 2011 McKenna Report or by the 2014 Hippolyte Survey. Furthermore, it is not borne out by the evidence of Mr. Hippolyte at trial. He testified that the area of land occupied by the Chitolies was the northern part of Parcel 227. and falls partly within the map sheet for the registration section of Blocks 1020B and 1021B.

[94] In my view, in light of the evidence, including the evidence of Jonah Chitolie, the learned judge's conclusion that the appellants had not established that the

Chitolies were in occupation of the disputed land for over 100 years cannot be assailed. Furthermore, the totality of the evidence led at trial, disclosed that in 1991 the Chitolies' occupation of the disputed land extended to some 33.5 acres of the land, and they continued thereafter to expand their acts of occupation by rebuilding the wooden dwelling-house into a concrete structure and by building a fence around the area which they occupied.

[95] In my judgment, the conclusion reached by the learned judge at paragraph 93: 'The defendants have conceded and the Hippolyte Survey confirms, and the Court therefore accepts and finds that the defendants are in occupation of the said Parcel 227 (now Parcels 441, 444, 446 and 447)', is not a finding that the appellants were in occupation of the entirety of the land comprising Parcel 227 (now Parcels 441, 444, 446 and 447). Such a finding would not be consistent with the independent evidence, including the unlodged 1976 Augustin Survey, the 2011 McKenna Report and the 2014 Hippolyte Survey.

[96] In the premises, the learned judge erred in not attaching any evidential value to the unlodged 1976 Augustin Survey which, when read in conjunction with the 2011 McKenna Report and the 2014 Hippolyte Survey, provide independent evidence of the occupation of a portion of the disputed land Parcel 227 by the appellants and the Chitolie family going back to at least 1976. Accordingly, the appellants have been successful to that limited extent on issue 1.

[97] This conclusion leads inexorably to the issues of whether the Chitolies' occupation going back to 1976 was open, exclusive, peaceable and uninterrupted, and whether their failure to claim the said land based upon long possession during the LTRP is fatal to their counterclaim for rectification, such that they cannot now rely on their occupation and use of the said area of land prior to the first registration of Parcel 46, as a basis upon which to found a claim to ownership of the disputed land. Also, whether the 2006 Claim and

2006 Injunction constituted a 'judicial demand' such as to interrupt any period of possession in the process of being acquired by the appellants.

Issues 2, 3, 4, 5 and 6 – Voluntary Transfer, Mistake, Failure to Claim Disputed Land, Effect of First Registration, and Overriding Interest - Section 28(f) and (g) of the LRA

Some important features of the Torrens System introduced in Saint Lucia

[98] The Torrens system of registered land, which had its origins in Australia, was brought into effect in Saint Lucia by the conjoint effect and operation of the LAA and the LRA. Both statutes became the law of the land in Saint Lucia in the mid 1980's and ushered in a comprehensive and island-wide process known as the Land Registration and Title Project (LRTP). These two compendium pieces of legislation effectively displaced the old system of title by registration of deeds dating back to 1879. The Torrens system of land registration had been brought into effect in the early 1970's in other countries of the Eastern Caribbean, including the British Virgin Islands, Antigua and Barbuda and Anguilla. The provisions of the LAA and LRA in Saint Lucia, and the processes and systems implemented by these statutes, largely mirror their counterpart statutes, processes, and systems in these countries. However, as shall be made clear later in this judgment, there are some significant or material differences.

[99] The underlying objective of this legislative framework was to bring all land in Saint Lucia under a new and modern land registration system with the undergirding objectives of bringing certainty to the ownership and identification of lands by way of a statutory system of title by registration.¹⁵

¹⁵ See: **Richardson Anthony Arthur v The Attorney General of Turks and Caicos Islands** [2012] UKPC 30; **Joseph v Francois; Matty v Francois** [2015] ECSCJ No. 190 (delivered 21st August 2015.) at para.25); and **Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited** [2019] ECSCJ No. 336 (delivered 16th October 2019) at para. 9.

[100] A hallmark principle of the Torrens system, as ushered in by these two Acts, is that it is ‘a system of title by registration’, and not ‘a system of registration of title.’ Registration under the LRA vests title in the proprietor. Accordingly, the register is itself the title to the property. The title ‘is no longer derivable and can no longer be conferred, discerned or extracted from any document other than the land register.’¹⁶ It is well-accepted that the LAA and LRA effectuated a profound or seismic shift in the land law in Saint Lucia, as it did in the other countries in the Caribbean where similar legislation has been enacted. This seismic shift was succinctly explained by Berwick CJ in this oft cited passage from his judgment in **Breskvar v Wall**¹⁷ (approved and relied upon by this Court in **James v Planviron**):

“The Torrens system of registered land of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not the historical or derivative. It is the title which registration itself has vested in the proprietor.”

[101] The principal objectives and advantages which undergird the Torrens system were achieved in Saint Lucia through a raft of provisions in the LAA and LRA, buttressed by the provisions of the **Land Surveyor Act**.¹⁸ The LAA provided, *inter alia*, for the appointment of an adjudication officer, and demarcation, survey and recording officer(s), each imbued with specific duties and functions and, in the case of the adjudication officer, quasi-judicial authority. As to the steps and processes to be implemented in order to fully execute the LRTP and bring all land in Saint Lucia under this new system of title by registration, the LAA provided for notices to be issued and published by the adjudication officer

“requiring any person who claims any interest in land within the adjudication section to make a claim either in writing or in person or by his or her agent duly authorized according to law, within the period and at the place and in the manner specified in the notice.”

¹⁶ Per Pereira CJ in **Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited** [2019] ECSCJ No. 336 (delivered 16th October 2019) at para. 25)

¹⁷ 1971) 126 CLR 376.

¹⁸ Chapter 5.07 of the Laws of Saint Lucia.

Such notices also required claimants to land to mark or indicate the boundaries of the land which they claimed - section 6(b) and (c) of the LAA. The statutory claim form required each claimant to state the basis of their title to the land, whether documentary or by long possession. Provision was also made under the LAA for the issuance of notices by the demarcation officer notifying of the date of the intended demarcation of land within a specified adjudication section, and the time and place at which it will begin.

[102] Most importantly, the LAA empowered the adjudication officer to adjudicate upon and decide rival claims to land (section 15), and to hear and determine petitions brought under section 20 of the Act. Provision was also made for the correction by the adjudication officer, prior to the adjudication record becoming final, of errors or omissions, including errors or omissions materially affecting the interests of any person, provided prior notice was given to them and they were afforded an opportunity to be heard before the adjudication officer made his decision (section 22). Importantly, section 23 of the LAA provided for the adjudication record for a section to become final and to be so certified by the adjudication officer, who shall then deliver the adjudication record and demarcation map to the Registrar of Lands 'together with all documents received by him or her in the process of adjudication'. Appeals from decisions of the adjudication officer were to the Land Adjudication Tribunal, and therefrom to the Court of Appeal. The Court of Appeal was empowered to make such order or decision as the justice of the case requires, and 'may under the provisions of the Land Registration Act, order rectification of the register' (section 24).

[103] Following an adjudication record being certified as final and transmitted to the Registrar of Lands, each parcel of land the subject of such certification is then, by operation of the powers of the Registrar of Lands under the LRA, formally brought under the new 'title by registration' system provided for in the LRA. Registered title to that parcel of land, either absolute title or provisional title, is

then vested in the person who claimed the land or to whom the land was adjudicated or determined by the adjudication officer or by the Land Adjudication Tribunal or the Court of Appeal. This is effectuated by the opening of a land register for the parcel and formally and effectively vesting title to that parcel of land in the name or names of the proprietor or proprietors. The opening of the land register effects the first registration of the parcel of land. Provision is also made under the LRA for a parcel of land subsequent to its first registration, to be mutated and subdivided into two or more lots, and for new land registers to be opened for each new parcel thereby created. Each new land register will have its own date of commencement and will have noted therein any appurtenances or encumbrances which were noted on the original land register with respect to the said land, unless any such rights, interests or encumbrances have been previously removed or deleted upon application being successfully made to the Registrar of Lands or to the courts for rectification.

- [104] This system of land registration in Saint Lucia brought into existence by the LAA and LRA, is undergirded and buttressed by several important foundational principles, provisions, and features. Accordingly, the registration of a proprietor with absolute title to a parcel of land carries with it the absolute ownership of that parcel together with 'all rights and privileges belonging to or appurtenant thereto, free from all other interests and claims whatsoever' - section 23 of the LRA. However, absolute title to registered land is expressly subject to leases and other encumbrances, conditions and restrictions that may be noted on the register; and to such rights and interests 'as affect the same and are declared by section 28 [of the LRA] as not to require noting on the register.' Section 23(a) and (b)) Section 28 sets out what are referred to as 'overriding interests', that is, rights and interests in registered land which are not required to be noted on the land register in order for them to be effective and binding. They affect materially the title of the registered proprietor to a parcel of land and will so affect that parcel in the ownership of all subsequent purchasers or registered

proprietors of that parcel, and any new parcels created therefrom through the statutory process of mutation and subdivision. In short, the registered title to a parcel of land passes from owner to owner subject to any such overriding interests that affect that parcel, notwithstanding that they are not and are not required to be noted on the register.

[105] In the instant matter, three types of overriding interests are of relevance to the determination of the issues in this appeal. These are: (i) rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions; (ii) rights acquired or in the process of being acquired by prescription; and (iii) 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.¹⁹

[106] Of some relevance also is section 27 of the LRA relating to a ‘voluntary transfer’. Section 27 stipulates (in material particular):

“Every proprietor who has acquired land...by transfer without consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it...but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for consideration.”

[107] A registered title to land under the LRA is also subject to the power or remedy of rectification exercisable by the Registrar of Lands under section 97(1) to address informal matters, to correct omissions which do not materially affect the interest of any proprietor in certain specified circumstances, none of which are material to this matter, except that the Registrar of Lands is empowered to rectify the land register to give effect to a decision of the Land Adjudication Tribunal under section 20(3) of the LAA.

¹⁹ See section 28(f) and (g) of the LRA.

[108] Of more relevance to the instant matter is the court's statutory power of rectification under section 98 of the LRA. Accordingly, the High Court of Justice may order rectification of the land 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.' The court's power to order rectification in circumstances where fraud or mistake has been established to its satisfaction, is expressly disallowed and made unavailable as a remedy, where a proprietor is 'in possession of the land or in receipt of the rents and acquired the land... 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.'²⁰ In short, rectification on the grounds of fraud or mistake can defeat a proprietor's registered title to a parcel of land. In these limited and narrowly circumscribed ways, the indefeasibility of an absolute title to registered land provided for in section 23 of the LRA, including a first registration, can be defeated.

[109] The certainty of title which the LRA provides, is underpinned by the provisions of section 38 of the LRA. It reads:

"38 (1) No person dealing or proposing to deal for valuable consideration with a proprietor shall 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; or

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

(c) to search any register kept under the Registration and records Act.

(2) Where the proprietor of land Is a trustee he shall, in dealing therewith, be deemed to be the absolute proprietor thereof, and no disposition by such trustee to a bona fide

²⁰ See section 98(2) of the LRA.

purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.”

[110] By the conjoint effect of sections 38(1) and 98 of the LRA, a person who acquires land for consideration without notice of any operative fraud or mistake affecting the title of the transferor, will acquire an indefeasible and absolute title thereto, in circumstances where the transferor did not have good title because of fraud or mistake or on the basis of a void instrument.²¹ What constitutes a ‘mistake’ under section 98 of the LRA, has been the subject of judicial interpretation and pronouncement at the highest levels of our court system. I shall return to this when I come to consider issue 5.

[111] It is also important to note that Parliament has provided in sections 99, 100 and 101 of the LRA for the payment of compensation, to be assessed by the Registrar of Lands in certain clearly defined circumstances, to persons who have suffered damage as a result of the implementation by statute of the Torrens system. These circumstances include (in section 99) where the damage is by reason of any rectification of a land register, or by any mistake or omissions in the register which cannot be rectified, other than a mistake or omission in a first registration. Accordingly, compensation may be payable where rectification has been made and where it has not. However, compensation for such loss is not payable where the person aggrieved has himself caused or substantially contributed to the damage by their own fraud or negligence, or where the aggrieved person derives his title (otherwise than under a registered disposition made in good faith and for consideration) from a person who so caused or substantially contributed to the damage. By section 100, where compensation is to be awarded for the loss of any interest in land, it shall not exceed, in a case where the register is not rectified, ‘the value of the interest at the time when the mistake or omission which caused the

²¹ *Frazer v Walker and Others* [1967] 1 All ER 649.

damage was made'; and 'where the register is rectified, the value of the interest immediately before the time of rectification.'

[112] Importantly, the LRA provides in sections 94(1) for the acquisition of ownership and the registration as proprietor of land by 'positive prescription'. Positive prescription is defined at Article 2047 of the **Civil Code** as where 'title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession'. Moreover, by Article 2057, when relying on or claiming positive or negative prescription, 'the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor'. It has been held by this Court in **Joseph v Francois; Matty v Francois** that where a party relies on prescription as a defence 'evidence must be led which satisfies Article 2057 of the **Civil Code** in order to successfully defeat a claim made by a person as owner'. The prescriptive period for 'sole and undisturbed possession' is stipulated as 30 years by Article 2103A of the **Civil Code** and the **Supreme Court – Prescription by Thirty Years (Declaration of Title) Rules** ("the Prescription Rules")²² Accordingly, for the appellants to defeat the respondent's registered title to Parcel 227, they will have to satisfy the requirements of Articles 2057 and 2103A of the **Civil Code**. However, a person claiming title to land by positive prescription is required to apply to the Registrar of Lands 'in accordance with rules of court for registration as proprietor thereof.'²³ It is pursuant to this process under the LRA that the registered title to a parcel of land, including first registration, may be acquired by prescription. This was the position under the laws of Saint Lucia as found by the majority of the court in **James v Planviron**.

[113] I pause here to observe that the appellants' case based on an overriding interest in the disputed land by prescription, which claim and argument the judge rejected, faces two significant hurdles as elucidated by this Court in

²² S.I. No. 7 of 1970.

²³ See section 94(1) of the LRA.

cases such as **Joseph v Francois; Matty v Francois**, and **James v Planviron**. The first is that the conjoint effect of the LAA and LRA in Saint Lucia is that the adjudication and first registration of a parcel of land interrupts any prescriptive rights which have or were being acquired prior to first registration and, accordingly, the period of occupation prior to first registration is not to be counted or reckoned when making a defence or claim based on prescription. The second hurdle is that the jurisdiction and power to determine claims for prescriptive title to registered land now vests in the Registrar of Lands and not with the courts which retain a supervisory role. The first principle applies with particular force in circumstances where, as here, the persons relying on prescription as a defence and/or as a claim for rectification, had not claimed the disputed land during the LRTP, as they were required to do by section 6(1)(c) of the LAA. In such circumstances, the provisions of the **Civil Code** are of little assistance and are inapplicable to a prescription claim or defence.²⁴ This important principle, based upon the conjoint or interlocking effect of the LAA and LRA and the paradigm shift which they effectuated in the land law of Saint Lucia, has been given full recognition and was authoritatively stated by the Privy Council in **Sylvina Louisien v Joachim Rodney Jacob** at paragraph 39. I shall return to this aspect under issue 4.

Appellants' Submissions on Issues 2, 3, 4, 5 and 6

[114] The appellants take issue with the judge's findings and conclusions at paragraphs 71, 123 and 124 of the judgment. Counsel submitted that the judge made erroneous findings and conclusions of law in rejecting the appellants' claim to an overriding interest under section 28(g) of the LRA, based on the undisputed evidence of the appellants and Chitolies' actual occupation of the disputed land, and their receipt of the income therefrom. It was also submitted, but not strenuously pursued, that the judge erred in concluding, on the authority of the decision of this Court in **Joseph v Francois; Matty v Francois**

²⁴ See: paras. 25, 26 and 27 of *Joseph v Francois* [2015] ECSCJ No. 190 (delivered 21st August 2015).

that, at this stage, the court cannot go behind the land register to examine the title deeds and receipts which pre-date the LRTP.

[115] Dr. Barnett also submitted that the statements at paragraphs 26 and 27 of the judgment of this Court in **Joseph v Francois; Matty v Francois** do not comport with the clear provisions of section 28 of the LRA. He argued that the facts of that case and the issues raised were substantially different from those in the instant matter, the issue of overriding interests was not raised, and hence did not arise on appeal for consideration by this Court. Accordingly, the appellants submit, the comments made by this court at paragraphs 26 and 27 were made *per incuriam* and are, accordingly, not binding. Dr. Barnette urged this Court in the instant matter to place more reliance on the decision of the Privy Council in **Graham-Davis and Another v Charles and Others**;²⁵ the decision of the Caribbean Court of Justice (“CCJ”) in **David George v Albert Guye**;²⁶ and the House of Lords in **JA Pye (Oxford) Ltd and another v Graham and another**.²⁷ Likewise, Dr. Barnett sought to distinguish and urged this Court not to apply its decision in **James v Planviron**, on the basis that the said case was concerned with whether the prescription provisions under the **Civil Code** of Saint Lucia were no longer applicable law having been impliedly repealed by section 94 of the LRA and did not concern a claim for an overriding interest under section 28 of the LRA. I shall return later to the decision in these cases.

[116] Dr. Barnett argued that the judge was wrong in law in concluding that the appellants had to show not just that they were in actual occupation of the disputed land, but to identify what right they had acquired in it giving rise to an overriding interest under section 28(g) of the LRA, and that they had failed to do so. Also, the appellants submit, the judge was wrong to have found that the right which the appellants were seeking to claim or to protect in the disputed

²⁵ (1992) 43 WIR 188.

²⁶ [2019] CCJ 19 (AJ).

²⁷ [2002] UKHL 30.

land, being not one under a lease or license but grounded, instead, in the assertion of a documentary title to the disputed land on the strength of the unregistered 1976 Agreement and the 1911 receipt, was inconsistent with ownership of the disputed land on the basis of their actual occupation of it.

[117] The appellants address, in some detail, the issue of their entitlement to overriding interests, at paragraph 4 of their skeleton argument filed on 6th November 2020. Their claim to overriding interests affecting the respondent's title to the disputed land falls under certain of the categories of overriding interests set out in section 28 of the LRA. These are: (i) under section 28(f) – rights acquired by virtue of their occupation and possession for a period of 10 years or more pursuant to Article 2112 of the **Civil Code**; (ii) prescriptive rights and entitlement of ownership acquired by virtue of over 30 years occupation and possession under Articles 2103, 2103A and 2106 of the **Civil Code**; and (iii) under section 20(g) – rights acquired by virtue of the evidence of their actual occupation of the disputed land for decades 'as a purchaser whose title was not registered' and continuing since the registration of the respondent as proprietor of Parcel 227; (iv) rights acquired by virtue of the appellants being in receipt of the income from the said land throughout the period of their occupation having disclosed such rights in the land to the respondent. They submit that the word 'or' in section 28(g) is disjunctive. Accordingly, their overriding interest in the disputed land has been made out by the fact of their long and actual occupation and, separately, by their receipt of income from the land, neither of which facts are in dispute. The appellants rely on the decisions in **Ulina Jennifer George v Hilary Charlemagne**,²⁸ **Spiricor Saint Lucia Limited v The Attorney General of Saint Lucia and another**,²⁹ **Strand Securities Ltd v Caswell and another**,³⁰ and **Williams & Glyn's Bank Ltd v Boland**.³¹

²⁸ [2003] ECSCJ No. 33 (delivered 3rd April 2003).

²⁹ [1997] ECSCJ No. 36 (delivered 26th May 1997).

³⁰ [1965] 2 WLR 958.

³¹ [1981] AC 487.

- [118] The appellants also submit that the claim to overriding interests was pleaded in their statement of case, albeit they concede that the 10-year limitation defence was first asserted by them in paragraph 21 of the parties' Joint Pre-Trial Memorandum. It was submitted that the judge was clearly wrong to have concluded that the issue of estoppel in the respondent's claim based upon the 10-year limitation period, 'was not pleaded and only raised for the first time in [the appellants'] submissions.'
- [119] The appellants also place reliance on the principles applicable to voluntary transfers in section 27 of the LRA. They submit that the respondent acquired title to Parcel 227 without consideration and by way of a voluntary transfer from NDC. Accordingly, the respondent holds title to the disputed land subject to all unregistered rights and interest therein which the appellants and their family had acquired by virtue of their long occupation and possession thereof prior to first registration in the name of the NDC as proprietor of Parcel 46 under the LRA. These include the appellants' then (alleged) existing rights as persons in actual occupation of the said land going back over 100 years, and in receipt of the income therefrom. These rights and interests would include also the appellants' right to be registered as owners of the disputed land by virtue of prescription, a matter which I shall deal with later. Accordingly, the appellants submit that when NDC was first registered as the proprietor of Parcel 46, the appellants had already acquired full rights to and were effectively the owners of the disputed land entitled to be registered as such.
- [120] Regarding the consequences and legal effects of the appellants' failure to claim the disputed land during the LRTP, learned counsel for the appellants posited two responses. The first is that the LRA in sections 27 and 28 expressly preserved (and did not erase) such possessory rights, which continue to affect the title to registered land without being required to be noted on the register. The second is that it would be far-reaching and a profound thing to do for a statute to effectively eliminate or extinguish a person's possessory rights in

land. Accordingly, a court must be slow to arrive at such a conclusion without the clearest of language in the statute. In this regard, the appellants submitted, the language and meaning of sections 23(b), 27 and 28 are clear and unambiguous and not open to an interpretation leading to such a conclusion. In support of this submission the appellants relied on the decision of the House of Lords in **Hadmor Productions Ltd and others v Hamilton and others**.³²

[121] Counsel sought to buttress these points by reference to provisions in both the LAA and LRA and their plain meaning and effect. Reference was accordingly made to section 6(1)(c) of the LAA which requires any person who claims 'any interest' in land to make a claim. The appellants argue that this clearly recognises that the existing rights and interest of a person in actual occupation of the land was expressly preserved, and such interest cannot be extinguished by a failure to make a claim or by first registration of the land in the name of another person, who would, accordingly, take title to the land subject to such pre-existing rights and interests.

[122] It is the appellants' case that the effect of these provisions, taken singularly or conjointly, is to preserve rights of a person in actual occupation of registered land or in receipt of the income therefrom, acquired prior to first registration of the land, and there is nothing in the language of any of these provisions or in any other provision of the LAA or LRA which, properly construed, could or ought to lead to a different conclusion or to the conclusion, which the learned judge accepted, that such rights as existed had become extinguished or incapable of being relied upon subsequent to first registration. Likewise, the failure by the appellants to make a claim to the disputed land during the LRTP, based upon their acquired or pre-existing possessory rights or interests, did not result in the appellants, as a matter of law, losing such rights or interest, so as to effectively prevent them from making a claim to the disputed land subsequent to first registration.

³² [1982] 1 All ER 1042.

- [123] The appellants cited paragraph 21-05 of the text **Adverse Possession**³³ which deals with adverse possessory right acquired or in the process of being acquired prior to first registration, and the effect of section 75 of the English Land Registration Act 1925.
- [124] The appellants also relied on the decision of the Judicial Committee of the Privy Council in **Graham-Davis and another v Charles and others**. In that case, the Board was required to construe the meaning and effect of the proviso to section 15(2) of the Land Adjudication Act 1975 and sections 23(b) and 28 of the Registered Land Act 1975 (absolute title subject to overriding interests) of Antigua and Barbuda. It is accepted that sections 23(b) and 28 are in *pari materia* with the relevant sections of the LRA in Saint Lucia. However, the same cannot be said for section 15(2) of the Land Adjudication Act of Antigua & Barbuda which is quite dissimilar to section 6(1)(c) of the LAA in Saint Lucia. Accordingly, a distinguishing feature of the **Graham-Davis** case is the proviso to section 15(2), which is repeated in identical wording at sections 20 and 22 of the same Act. Proviso 2 to section 15(2) expressly prohibits the adjudication officer when deciding rival claims to land to 'vary any interest in land registered under the Title by Registration Act'.
- [125] Another important distinguishing feature between the instant matter and **Graham-Davis**, is that in the latter both the appellants and respondents had claimed the land in dispute (or parts thereof) known as 'The Bluff' during the land adjudication process in Antigua & Barbuda. The appellants claimed on the basis of his certificate of title and the respondents on registered deeds of conveyance and on possessory title to parts of the disputed land. The adjudication officer, having considered that his powers under section 15(2) of the Land Adjudication Act of Antigua and Barbuda did not allow him to 'vary any interest in land', declined to deal with the respondents' claim to a

³³ Stephen Jourdan QC and Oliver Radley-Gardner, *Adverse Possession* (2nd edn , Bloomsbury Professional 2011).

possessory title. Relying on the appellants' certificate of title, the adjudication officer determined the rival claims in favour of the appellants who were, accordingly, registered under the Registered Land Act as proprietors of the disputed land.

- [126] The judge at first instance found in favour of the respondents based upon their possessory claim and declared them to be the owners of the separate portions of the Bluff which they purchased from John D. Charles. On appeal, this Court held that:

“the registration of the appellants as the proprietors with absolute title of the disputed land was subject or without prejudice to the possessory rights (if any) which the respondents may have purchased from Charles and which may have subsisted at the time of the registration.”

On the issue of the respondents' possessory claim to parts of the Bluff, Floissac CJ, who gave the judgment of the Court, in dismissing the appeal, reached the following conclusion on a review of the evidence before the learned judge:

“The evidence was that, on or before 7th July 1975, the respondents were in occupation of the disputed land and no inquiry was then or thereafter ever made by Mrs. Joyal or the appellants as to the character of that occupation. The result is that the occupational rights of the respondents must be deemed to have been overriding interests protected by section 28(g) of the Registered Land Act 1975.” (p.193g -j)

- [127] The appellants' appeal to the Board was dismissed. The appellants in the instant matter, placed heavy reliance on a passage from the decision of the Board delivered by Lord Jauncey of Tullichettle (at p. 198g – 199e). I shall return to this passage later in this judgment.

- [128] The appellants also placed much reliance on the recent decisions of the CCJ in **David George v Albert Guye** at paras. 18, 19, 23, 24, 25 and 31 per Saunders PCCJ, an appeal from the Commonwealth of Dominica. In **George**

v Guye, a case decided by the CCJ on the peculiar statutory provisions in Dominica, Saunders PCCJ, delivering the leading judgment of the CCJ, having reviewed the case law from Dominica, opined –

‘[23] The above cases confirm what an ordinary reading of the two statutes reveal. First, the title of a registered proprietor that underlies the certificate is extinguishable if the latter allows a squatter to be in possession of the disputed land for the statutory 12 year period. Secondly, such a squatter is unable to maintain, in the sense of commencing or instituting, an action against the registered proprietor without first availing herself or himself of the provisions of section 23 of the TRA. Thirdly, given the specifically stated second exception to the concept of indefeasibility, even if such a squatter has not availed herself or himself of the TRA section 33 procedure, the squatter is still entitled successfully to resist in court a claim by the registered proprietor for recovery of the land.”

[129] The appellants submit that on the pleadings and on the uncontradicted evidence at trial they and their ancestor Chitolies, ‘have been in continuous and uninterrupted, peaceable, public, unequivocal possession, and as proprietor of the disputed lands in the aggregate since 1911’. They argue further that any right of action which the respondent and its predecessor in title, the NDC, had to recover possession of the disputed land Parcel 277, was barred after 12 years in favour of their possession, pursuant to Article 2064 of the Civil Code. In support of this submission they relied on the cases of **Calder v Alexander**;³⁴ **Fleet v Silverstein and Tenebaum**;³⁵ **Mount Carmel Investments Ltd v Peter Thurlow Ltd et al**;³⁶ **Samuel Johnson & Co. Ltd v Brock**;³⁷ and **Perry v Clissold**.³⁸

[130] The appellants submit that the learned judge wrongly placed much emphasis on the *animus* of the Chitolies in occupying the disputed land. They submit that on any view of the uncontradicted evidence before the court below, they and

³⁴ (1900) 26 T.L.R. 294.

³⁵ [1963] 1 O.R. 153.

³⁶ [1988] 3 All E.R. 129.

³⁷ [1907] 2 Ch. 533.

³⁸ [1907] A.C. 73.

their ancestors have been in possession of the disputed land going back several generations of Chitolies, which possession has effectively ‘dispossessed’ the paper owner, including the NDC (the respondent’s predecessor in title) upon first registration, and the respondent, having obtained title by way of a voluntary transfer, their title is likewise subject to such existing rights and interests. They submit that their actual occupation of the disputed land satisfies both the mental and physical elements necessary to establish a “dispossession” of the paper owner, albeit they were, on the facts of this case and the open character of their occupation and use of the disputed land, not required, as a matter of law, to prove the mental element or *animus*, which element must be presumed.

[131] In support of this submission, they contend that the mental element necessary to obtain an adverse, possessory or prescriptive title to land is simply an intention to possess which, when coupled with the physical act of occupation for the requisite period to the exclusion of the paper owner, amounts to possession in law giving rise to an interest or estate in the disputed land capable of protection as an overriding interest under section 28 of the LRA. There is no requirement in law that a squatter must actually oust or ‘dispossess’ the paper owner in order to establish a possessory title to the disputed land. Once the squatter is in possession, it follows that the paper owner is not and has been dispossessed. In support of this submission, the appellants cited the decisions of the House of Lords in **J A Pye (Oxford) Ltd and another v Graham and another**,³⁹ and of the English Court of Appeal in **Ofulue and another v Bossert**.⁴⁰

[132] In the instant matter the learned judge found that the claim by the appellants to the disputed land based upon their long occupation and possession of it, was inconsistent with their assertion that they were the rightful owners of the

³⁹ [2002] UKHL 30.

⁴⁰ [2008] 3 WLR 1253.

land in fee simple by virtue of documentary title. The appellants take issue with this conclusion. They submit that this approach and conclusion by the judge was contrary to well-established principles and therefore incorrect. It is submitted that the learned judge erred in not giving the fullest of consideration to the uncontradicted fact that the appellants and their ancestors have, by virtue of their long occupation and possession of the disputed land, effectively dispossessed the paper owner and are entitled to be registered as owners of the disputed land based upon their possessory rights and interests acquired before the LRTP. Accordingly, when the NDC received registered title to the disputed land, then part of Parcel 46, upon first registration under the LRA, their title was subject to the existing rights and interest of the appellants and, likewise, when the land Parcel 227 was transferred to the respondent, it also took title subject to the appellants' acquired rights and interests. In support of this contention, the appellants rely on paragraph 9-38 from the learned authors of **Adverse Possession**.

- [133] In my judgment, on the evidence in this case, it is clear that the Chitolies have been in occupation of a portion of the disputed land Parcel 227 since at least 1976. The Chitolies' acts of occupation and use of the disputed land, including building houses (wooden and concrete) to the northern portion, living on the land, and other acts of farming the land and deriving an income from it, were clearly acts capable of dispossessing the paper owner. I am also of the view that the learned judge's conclusion that the appellants' claim to the disputed land based upon long occupation and possession by them and their ancestors, is inconsistent with their claim to be the rightful owners of the disputed land based upon documentary title, which latter claim the learned judge rightly rejected as being unsubstantiated and erroneous, is incorrect as a matter of law. The main issue on this aspect is whether the appellants, having not claimed the disputed land during the LRTP (whether based on documentary title or possessory title), the act of first registration of the disputed land and the vesting of title therein to NDC, effectively bars the appellants from claiming

post first registration, ownership of the said land based upon their occupation prior to the LRTP, and whether the 2006 Claim and 2006 Injunction amounted to an interruption in the appellants' period of continuous occupation of the disputed land, so as to defeat any claim to an overriding interest based upon actual occupation or limitation or prescription.

- [134] The appellants also submit that the learned judge was wrong to have concluded that the Chitolies had ignored the requirements of the LRTP to make a claim to the disputed land, since the uncontroverted evidence from Jonah Chitolie was that the recording officer, Mr. Hugh Lee, had approached his father Francis, the first appellant, on the said land and had promised to return but had not done so. At paragraph 7(x) of his witness statement, Jonah Chitolie states:

“The Recording Officer, Mr. Hugh Legge had approached my father on these lands and said he would be coming back to demarcate these lands but had never returned. I was with my father waiting for him at the North boundary while he was demarcating the lands higher North. He had approached us and having done a visual inspection of the land from the North to South said he had completed the day's work and would return, but never did. I am aware that the adjudication process was constrained by time and costs which may have accounted for his non-return.”

- [135] The appellants submit further that the adjudication officer had a duty to conduct the process under the LAA fairly, which duty extended to the Chitolies as persons in actual occupation of the disputed land at that time. Accordingly, the appellants argue, the failure by the recording officer to return to the land and meet with them amounted to a failure to treat them fairly during the process. This in turn amounted to a failure on the part of the adjudication officer (to whom the recording officer was responsible under the LAA) to act fairly towards the appellants as persons with an interest in the land, and constituted a 'mistake' in the conduct of the adjudication process, within the meaning of that term in section 98 of the LRA, entitling the appellants to the remedy of rectification of the land registers relating to the disputed land.

Respondent's Submissions on Issues 2,3, 4, 5 and 6

- [136] The respondent submits that section 23 of the LRA operates to vest indefeasible title in a proprietor of land registered with absolute title, subject only to sections 27 and 28 of the said Act. I would add that the concept of indefeasibility is also subject to the power of the court to order rectification of the land register pursuant to section 98 in circumstances where there is fraud or mistake in a registration, including a first registration. In that way also, an absolute title, including a first registration, may be rendered defeasible and be cancelled, subject to the exception provided for by section 98(2).
- [137] The respondent submits that the 2008 Deed of Transfer having been completed by registration, was a valid transfer within the meaning of section 56 of the LRA. They also argue that the said transfer was for 'consideration' within the meaning of that term in the **Civil Code**. Accordingly, the 2008 Deed of Transfer was not a voluntary transfer within the meaning of section 27 of the LRA.
- [138] The respondent canvassed in their submissions the provisions of Articles 354, 359 to 363, 529 and 1980 of the **Civil Code**. However, in my view, these provisions are of limited relevance to the determination of the main issues in this appeal. I so conclude, especially in view of the tectonic shift in the system of land ownership and registration brought into effect in Saint Lucia in the mid 1980's by the conjoint application of the LAA and LRA, as was comprehensively stated by this Court in a number of decisions. One such decision is **Spiricor of Saint Lucia Limited v The Attorney General** relied on by the respondent. The **Spiricor** decision underscores the central characteristic of the registered land system, that the land register is the title to the land and is not merely a reflection of the title previously held. These principles have been adopted and restated in subsequent decisions of this Court, and in decisions of the Judicial Committee of the Privy Council. Accordingly, they do not bear repeating here.

[139] The respondent also submits that, on the facts of this case, NDC, as the first registered proprietor of Parcel 46 by virtue of the LRTP, was vested with absolute title under the LRA, which title was not subject to any alleged rights or interests acquired or in the process of being acquired by the appellants, whether those rights or interests are said to be grounded in the appellants' actual occupation or possession of the disputed land prior to its first registration, or by the operation of any limitation period, or by prescription. Accordingly, NDC's registered title to Parcel 46 (and hence the respondent's registered title to Parcel 227) was not subject to any such rights or interests.

[140] As to the appellants' failure to claim the disputed land during the LRTP based on either documentary or possessory title, the respondent submits that this is fatal to the appellants' case. Any person who had an interest in land was obligated to come forward during the LRTP process and claim the land under the LAA. The appellants did not do so, even though it was clear on the evidence that they were well-aware of the requirement to do so as part of the LRTP, Francis having made a formal claim during that process to another piece of land comprising 5.25 acres which was subsequently registered as Parcel 37. Furthermore, the respondent submits that the learned judge was correct to conclude, on the authorities, that the first registration of Parcel 46 constituted an interruption in any period of possession or prescription being acquired by the appellants, such that they cannot rely on any period of occupation of the disputed land prior to the adjudication and registration on 23rd June 1987 of Parcel 46 with absolute title to NDC, in order to establish a claim to Parcel 227 or any overriding interests in relation thereto. Once the appellants made no claim to the disputed land during the LRTP, any claim which they may have had to it based on occupation or possession or prescription was extinguished. In support of this submission, the appellants cited the dicta of Mitchell J (as he then was) in **Berthilia Ennis v Phyllis Barras et al**⁴¹ as it relates to the claim based on documentary title dating back, allegedly, to 1911.

⁴¹ SLUHCV1995/0760 (delivered 3rd December 1998).

[141] Regarding the appellants' reliance on the 1911 receipt for 47 carres (i.e. 150.4 acres) of land at *Obrea*, the respondent relied on the expert report and evidence of Mr. Martyr annexed to his witness statement filed 28th February 2011 in this matter. Mr. Martyr concluded in his report that the said 47 carres of land referenced in the 1911 receipt issued to Chitolie Coolie, is the same as the areas annotated as Augier No. 23 and Augier No. 24 on the Survey Plan and Report of Le Fort de Latour dated 1787 and is 'geographically different and separate from the area identified on the same plan as Deglos No. 19B.' Further, the disputed land in this case as depicted on the unlodged 1976 Augustin Survey 'situated in the northern part' of 1020B Parcel 227, falls within Deglos No. 19B, 'and is not located within the areas annotated as Augier No. 23 and Augier No. 24'. Mr. Martyr opined that:

"the [appellants] are not in occupation of the land which is referred to in the document (LM8) [Deed of Deposit in 1976 by Francis Chitolie of 1911 Receipt] which is tendered to support the claim made by [Francis Chitolie]. In fact [the appellants] occupy part of the area known as Degios No. 19B of the Plan and Report of the Surveyor Le Fort de Latour dated 1787 and which is identified in the Land Registry as being part of the registered land parcel 1020B 227."

Mr. Martyr concluded, 'consequently, [the appellants] cannot sustain their entitlement to the disputed area based on the documentation (LM8) presented'.

[142] In my judgment, the report and evidence of Mr. Martyr establishes the following facts: (i) the disputed land which the appellants occupied as shown on the unlodged 1976 Augustin Survey was to the northern part of the land comprising Parcel 227 and did not encompass the entirety of parcel 227; the area of the land which the appellants were shown by the unlodged 1976 Augustin Survey to have been in occupation of in 1976 is shown as 181 acres, however, by the 2014 Hippolyte Survey the occupied area is shown as 229.05 acres; (iii) the area of land which the appellants were in occupation of as shown in the

unlodged 1976 Augustin Survey is geographically different from the area of land described as 47 carres (150.4 acres) in the 1911 receipt issued to Chitolie Coolie; and (iv) the appellants have produced no documentary title to the area of land which they occupied as the disputed land, and any claim thereto on the basis of the two documents deposited by the 1976 Deed of Deposit cannot be sustained.

[143] In response to the appellants' reliance on a 'mistake' in the adjudication process leading to an entitlement to the remedy of rectification of the land register, the respondent contends, firstly, that the appellants have failed in their Amended Defence and Counterclaim to particularise any form of mistake entitling them to rectification of the land register, which failure is fatal to any such claim. Secondly, to the extent that mistake has been properly pleaded, it relates to the adjudication process and not the registration process, which is unsustainable based on applicable principles and the case law. In support of this submission the respondent relied on the decision of this Court in **James Ronald Webster et al v Beryl St. Clair-Fleming** and the decision of the Privy Council in the seminal case of **Sylvina Louisien v Joachim Rodney Jacob**.

[144] The respondent submits that the failure by the appellants to avail themselves of the avenue under the LAA for making a claim to the disputed land during the LRTP or the avenues for petition, review and appeal under the LAA, disentitled them from the reliefs sought in their counterclaim for a myriad of reasons, and the learned judge was accordingly correct in not granting such relief, including rectification of the land registers. In this respect, the respondent cites several decisions of this Court in submitting that, on the undisputed facts of the instant matter, the appellants are estopped from challenging the adjudication and registration of Parcel 46 to NDC, and hence the resulting Parcel 227 subsequently transferred to them. Three such decisions are: **Hamilton La Force et al v The Attorney General et al**;⁴² **Thelma Crane v David Worrell**

⁴² [1996] ECSCJ No. 31 (delivered 22nd July 1996).

et al⁴³ and **James v Planviron**. The latter authority, in which Michel JA delivered a dissenting judgment, is on appeal to the Privy Council. The respondent submits that based on these authorities the learned judge's findings and conclusions of law as to the legal consequence flowing from the appellants failure to claim the disputed land during the LRTP or to exercise the avenues of petition, review and appeal under the LAA, are all sound and unimpeachable.

Analysis and Conclusions on Issues 2,3,4 5 and 6

[145] The starting point is that the respondent is the registered proprietor with absolute title of Block 1020B Parcel 227. The respondent obtained registered title to Parcel 227 by way of a transfer from SDC who had previously obtained title thereto by way of a transfer from the original registered proprietor NDC. The NDC had claimed the said land during the LRTP. There being no other claimants to it or any part thereof, whether by documentary or possessory title, the said land Parcel 46 was adjudicated to NDC and its title thereto registered as absolute.

[146] By the conjoint operation of the LAA and LRA, in conjunction with the **Land Surveyors Act**, all land in Saint Lucia was brought under a title by registration system in the mid 1980's, either with absolute title or provisional title. The level of protection, certainty and indefeasibility of title afforded by the LRA to parcels of land registered with absolute title, was not similarly afforded to parcels registered with provisional title. This is made manifest by section 24 of the LRA which expressly provides that, subject to section 27 (voluntary transfers), registration of a person with provisional title to a parcel of land:

“shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such manner as is specified in the register of that parcel; but save as aforesaid, such registration shall have the same effect as to registration of a person with absolute title.”

⁴³ [1998] ECSCJ No. 44 (delivered 27th October 1998).

[147] By contrast, section 23 of the LRA declares that, subject to sections 27 and 28, registration of any person with absolute title of a parcel of land 'shall vest in that person the absolute ownership of the parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever', but subject to leases, hypothecs and other encumbrances and to conditions and restrictions, if any shown on the register; and, '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'.

[148] At the time of first registration, the NDC had vested in it as sole proprietor with absolute title of Parcel 46, the statutory protections and certainty of title declared by section 23, subject to section 27 (voluntary transfer) and to any liabilities, rights and interests provided for under section 28 as not requiring noting on the register. The NDC's title to Parcel 46 was also subject to the court's power to order rectification of the land register pursuant to section 98 in circumstances where a challenger to its registered title can establish that the registration has been obtained, made or omitted by fraud or mistake.

Was the 2008 Deed of Transfer from SDC to NDC a voluntary transfer within section 27 LRA and was the respondent's title thereto expressly bound by the appellants' rights or interests as squatters on the said land?

[149] As to section 27 (voluntary transfers), a clear distinction is drawn between registered title obtained through a transfer for consideration and a voluntary transfer which, by definition, is without consideration. This provision is not applicable to a first registered title, which title is not obtained by way of a 'transfer', but by way of the conjoint operation of the LAA and LRA to vest a proprietor with registered title to land. In the case of a transfer without consideration (a voluntary transfer), the transferee takes 'subject to any unregistered rights or interests subject to which the transferor held [the land]'. Accordingly, the transferee gets a title which is encumbered by any acquired

rights or interests to which the title of the transferor was subject. This brings into issue the question whether the 2008 Deed of Transfer registered in July 2008 by which SDC transferred Parcel 227 (and other parcels) to the respondent, was for 'consideration' or whether, as the appellants contend, it was a voluntary transfer within the meaning of section 27. If it was a voluntary transfer, the legal effect would be that the respondent took title to parcel 227 (now Parcels 441, 444, 446 and 447) 'subject to any unregistered rights or interests subject to which the transferor [SDC] held it....'. However, in order for that to be the correct position in law, the registered title of NDC, from whom SDC took title to Parcel 227 by way of transfer, would have to have been also subject to such unregistered rights or interests.

[150] It is common ground that Article 917A of the **Civil Code** defines the concept of 'consideration' under the laws of Saint Lucia. By Article 917A(3), where there is a conflict between the law of England and the express provisions of the **Civil Code** or any statute, the provisions of the **Civil Code** or the statute, as the case may be, shall prevail. Proviso(a) to Article 917A(1) of the **Civil Code** expressly provides that the English doctrine of consideration is not applicable to contracts governed by the laws of Saint Lucia. Proviso (b) defines the term 'consideration' differently from the way in which that expression or concept is used or understood under English law. Proviso (b) states, 'the term 'consideration' when used with respect to contracts shall continue as heretofore to mean the cause or reason of entering into a contract or of incurring an obligation; and consideration may be either onerous or gratuitous.'

[151] However, Dr. Barnett, in his reply, while accepting that the English law concept of consideration does not apply in Saint Lucia by virtue of Article 917A (1) of the **Civil Code**, maintained that it is nevertheless clear that some form of consideration does apply. He submitted that section 27 of the LRA does apply to render the 2008 Deed of Transfer a voluntary transfer by which the respondent received registered title to Parcel 227 from the SDC, as the said

transfer does not deal with anything that could amount to 'consideration' under Proviso (b) to Article 917A(1). Accordingly, counsel maintained that the said transfer was subject to the unregistered rights and interests of the appellants which existed prior to first registration, and the respondent took title to Parcel 227 subject to such rights and interests as the appellants had acquired or were in the process of acquiring and which could and do constitute overriding interests.

[152] In my judgment, the 2008 Deed of Transfer from SDC as transferor to the respondent as transferee, by which the respondent obtained title to a number of parcels of land, including Parcel 227, is not a voluntary transfer within the meaning of that term in section 27. Accordingly, the respondent's absolute title to Parcel 227 (now Parcels 441, 444, 446 and 447) is not subject to any unregistered rights or interest subject to which SDC or the previous proprietor NDC, held it. I am satisfied that on a proper reading of the said instrument, that it satisfies the definition of 'consideration' under Article 917A(1) proviso (b) of the **Civil Code**. The 2008 Deed of Transfer was clearly for an identifiable 'cause or reason' for entering into the contract or an obligation incurred, notwithstanding that there is no stated monetary consideration, which is not a requirement for 'consideration' under the law of contract of Saint Lucia. In reaching this conclusion, I point in particular to the following provisions of the 2008 Deed of Transfer which clearly and unequivocally satisfies the definition of 'consideration' in Proviso (b) to Article 917A(1) of the **Civil Code**:

"The parties hereto acknowledge, agree and accept that **THE TRANSFEROR** shall transfer to **THE TRANSFeree** the said lands for the purpose of regularizing titles to those parcels of land currently occupied and further for vesting in **THE TRANSFeree** the unoccupied parcels of lands for the purpose of housing development.

WITNESS that in consideration of the agreement above **THE TRANSFEROR HEREBY TRANSFERS** to **THE TRANSFeree** all the properties listed in the First and Second Schedules hereto (hereinafter referred to as **THE PROPERTIES**) free and clear of all

encumbrances all **THE TRANSFEROR** rights title and interest in and to **THE PROPERTIES**

TO HOLD the same unto **THE TRANSFEREE** absolutely and with immediate possession for the aforementioned purposes.

AND THE TRANSFEREE hereby acknowledged, agrees and accepts that the said transfer is being made herein for the purpose of regularizing titles to those parcels of land currently occupied and further for the purpose of vesting in **THE TRANSFEREE** the unoccupied parcels of lands for the purpose of housing development.”

[153] Likewise, I am satisfied that the transfer of Parcel 227 from NDC to SDC was for ‘consideration’ within the meaning of that term in Article 917A(1) Proviso (b) and, hence, not a voluntary transfer within section 27 of the LRA. In my view, while the 2008 Deed of Transfer expressly recorded the agreement by the respondent as transferee to ‘regularize titles to those parcels of land currently occupied’, that contractual obligation is one between the transferor and transferee and is not one which is enforceable by the appellants who were not parties to the said deed. Furthermore, the said contractual term does not specify the manner or means by which such squatter or occupational rights must or ought to be ‘regularized’. The question remains, however, whether the first registration vesting absolute title to the original Parcel 46 in the NDC, was subject to any rights or interests which the appellants and their ancestors may have acquired in the disputed land prior to the LRTP, or which were in the process of being acquired; and whether any such rights or interests would constitute overriding interests pursuant to sub-paragraphs (f) or (g) of section 28 of the LRA, such that these rights or interests followed the successive transfer of title to SDC and to the respondent in 2008.

Was there a mistake in the registration of NDC as first proprietor of Parcel 46 entitling the appellants to rectification of the land register for Parcel 227 pursuant to section 98 of the LRA?

[154] In determining this issue, paragraphs 50, 53, 54 and 55 of the judgment of this Court in **James Ronald Webster et al v Beryl St. Clair-Fleming**⁴⁴ (delivered by Byron JA as he then was) are instructive: -

“50. In my judgment any mistake in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for mistakes occurring in the registration process. **A misunderstanding as to what was the real decision of the Adjudication Officer resulting in registering something that was not his decision as if it were, would be a mistake in the registration process.** (emphasis added)

53. These unauthorized acts of the Recording Officer made it appear that the Adjudication Officer had altered the adjudication of 27 acres to the respondents in Parcel 1 and had adjudicated a parcel of land in favour of the first-named appellant in Parcel 9, none of which was accurate.

54. The documents on which the Registrar of Lands acted in the entries made in the register of lands were, therefore, invalid documents which were used as if they were the genuine orders of the Adjudication Officer. They must be regarded as null, void and of no legal effect...”

55. In my view, the Court is empowered by Section 140 to ensure that the first registration is based on the final decision of the Adjudication Officer and not on the *ultra vires* adjudication records issued by the Recording Officer.”

[155] In **Louisien v Jacob** (on appeal from Saint Lucia) the Board held at paragraph 40 that:

“...But it is also clear from the authorities that rectification is not intended to be an alternative remedy for a claimant under the LAA who having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA. This conclusion does not depend on *res judicata* or estoppel properly so called; it follows

⁴⁴ [1995] ECSCJ No. 32 (delivered 8th May 1995).

simply from a correct understanding of the statutory machinery (see Byron JA in *Portland v Joseph* 25 January 1993, Civ App No. 2 of 1992)."

[156] At paragraphs 41, 42, and 44 Lord Walker of Gestingthorpe opined as follows:

"41. There is a line of jurisprudence on section 98 of the LRA and similar enactments in force in other Caribbean countries, indicating that rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in question) occurred in the process of registration. See *Skelton v Skelton* (1986) 36 WIR 177, 181-182; *Portland v Joseph*; and *Webster v Fleming*. Their Lordships consider that this principle is a correct and useful statement of the law, but would add two footnotes by way of explanation or amplification.

42. "A mistake in the process of registration" is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

...

44. In their Lordships' opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such inquiries, and proceed on the basis of a defective adjudication record, that may amount to repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available."

[157] The decision of the Board in **Louisien v Jacob** further clarified and amplified the principles formulated and elucidated in prior decisions of this Court regarding the type of mistake leading to rectification of the register, which principles remain good law. Importantly, the Board in adding the two 'footnotes' in the passages cited above, also considered (at para. 43), in addition to the scenario posited at paragraph 44, two different situations or scenarios which could arise leading to a 'mistake' justifying rectification of a

land register, including a first registration, under section 98 of the LRA. These, while not intended to be exhaustive, relate to situations where (i) there is a mistake made by the staff of the Land Registry in transcribing the contents of a valid adjudication record into the register; and (ii) there is a mistake in the adjudication process itself caused by the recording officer exceeding his powers and altering the record after it had been confirmed by the adjudication officer causing a void adjudication record to be sent to the Registrar of Lands to effect the first registration under the LRA.

[158] In my judgment, it is pellucid that none of these three posited scenarios occurred or are alleged to have occurred in the instant matter. Neither has any error or mistake of that genesis taken place such as could give rise to rectification under section 98. The appellants' case for mistake leading to rectification, is an alleged failure by the recording officer to return to the land to meet with Francis Chitolie, as allegedly he said he would do, which failure they submit rendered the adjudication process in relation to Parcel 46 unfair to the appellants as persons then in actual occupation of a portion of the disputed land. While, by section 16(1)(a) of the LAA, the recording officer was empowered in preparing the adjudication record, to record as owner a person whom he was satisfied was 'in public, continuous, uninterrupted, unequivocal peaceable possession as proprietor of a parcel of land...' (other than Crown land) for a period of 30 years or more, he had no authority to do so in circumstances where there was no claim made to ownership of the said land (as in the instant matter) and certainly not where there was a claim to the said land by another person. Any failure by the recording officer to return to meet with Francis, even if accepted as a fact (which it was not by the judge) did not, in my judgment, amount to a failure or a breach of his statutory duties such as to lead to a mistake in the adjudication process for Parcel 46. It is not a mistake in the adjudication process which resulted in an obvious error on the face of the adjudication record being carried forward into the registration process, such as to empower the court to order

rectification of the land registers for the disputed land. There is no suggestion, and there cannot be any, that the adjudication record, when it became final, contained any error which led to the Registrar of Lands incorrectly transcribing entries onto the land register for Parcel 46. Likewise, there is no suggestion that the recording officer acted in excess of his statutory authority thereby rendering the adjudication record a nullity or patently incorrect. Moreover, there is no suggestion that the adjudication officer acted in some way contrary to law by failing to adjudicate rival claims to Parcel 46 or any part thereof or exceeded his statutory powers so as to render the adjudication record a nullity.

[159] The simple fact is that the appellants made no claim to the disputed land at all, whether based on documentary or possessory title, as they were required to do by section 6(c) of the LAA. Accordingly, putting aside the question of whether mistake had been properly pleaded by the appellants, there could be no error, omission or mistake in the adjudication process or the registration process so as to invoke the powers of the court under section 98 and the remedy of rectification of the land register. As the Board opined in **Louisien v Jacob**, this conclusion is not dependent upon the doctrine of estoppel or issues of *res judicata*, but rests squarely on the kind of mistake in the process of registration upon which the court's powers under section 98 are sensibly circumscribed. In any event, it cannot be gainsaid that the appellants, especially Francis, were unaware or unfamiliar with the LRTP process and requirement under the LAA for claiming title to land, as Francis utilized this very process during the LRTP in claiming the land registered as Parcel 37. It follows that the learned judge was correct to reject any claim by the appellants based on mistake.

What is the legal effect of the appellants' failure to claim the disputed land during the LRTP and the first registration in 1987 of the NDC as proprietor of Parcel 46 on the appellants' claim to overriding interests?

[160] In my judgment the appellants, having not claimed the disputed land during the LRTP, they cannot in this matter rely on documentary evidence of their title to the said land prior to the LRTP in order to defeat the respondent's registered title to Parcel 227. This follows from the conjoint effect of the LAA and LRA, as the learned judge correctly concluded.

[161] The appellants, like all other persons in Saint Lucia, were required by law to claim any land in which they had an interest as owners during the LRTP. This is clear from sections (6c) and 8 of the LAA. The failure to make a claim, whether based on documentary or possessory title, meant that the title to the said land fell to be a recorded in the names of the person or persons who claimed it, subject to whether the title to be vested is adjudged to be absolute or provisional title. The LAA provided not just for ownership of land to be claimed, but for the adjudication and determination of rival claims by the adjudication officer under section 15, subject to appeals to the Adjudication Tribunal and thereafter to the Court of Appeal under section 24. Likewise, sections 20 and 21 provided for appeals against the adjudication record and for hearing petitions under section 20. No other officer, whether the recording officer or demarcation officer, was imbued by the LAA with such quasi-judicial powers. In short, a potential claimant could not simply absent himself or herself from the process of making a claim to land before the adjudication record was made final and transmitted by the adjudication officer to the Registrar of Lands for the opening of and noting on the land register of the particulars of the land, its ownership, and any appurtenances or incumbrances which required noting on the register. If they did fail to make a claim, they did so at their peril in that, once the adjudication record became final under section 23, the said land would be registered, often with absolute title, in the name of the claimant/proprietor thereof.

[162] Once the adjudication record became final and title to the said land registered under the LRA vests in a proprietor with absolute title, the only avenue available to a person to challenge that title is by way of an application for rectification of the land register under section 98, in circumstances where there has been fraud or mistake in the registration of the parcel, including its first registration. The appellants sought, some 34 years after the first registration of Parcel 46 in the name of the NDC as proprietor with absolute title, to claim ownership of the disputed land Parcel 227 by way of its defence and counterclaim in this matter and to invoke the statutory remedy of rectification. They have attempted to make a claim to the disputed land on the basis that they are the owners thereof in fee simple by virtue of a 1911 Deed and 1911 receipt and the 1976 Agreement, each of which document has been clearly shown, on the independent evidence in this case, to relate not to the disputed land, but to another portion of land in a different geographic location.

[163] In addition, the appellants also claimed the disputed land on the basis of the occupation and use of it by them and the Chitolie family, going back over 100 years to Chitolie Coolie in 1906. They assert that they and their ancestors have been in peaceable open and uninterrupted occupation and possession of the disputed land comprising Parcel 227 for in excess of 30 years prior to the LRTP and have satisfied the statutory requirements for a prescriptive title therein. However, this notwithstanding, the appellants made no claim to a possessory title in the disputed land during the LRTP, as they were required to do, and that process and the avenues for petitioning, review and appeal have all ended.

[164] In my judgment, the authorities are clear, the appellants having not claimed the disputed land during the LRTP can no longer, by way of a defence and counterclaim, assert a possessory right or interest acquired or in the process of being acquired prior to the LRTP. On this point, the appellants' reliance on the decision of the Board in **Graham-Davis v Charles** is misplaced. That

decision was reached on the basis of the particular provisions of the relevant statutes in Antigua & Barbuda, namely the Title by Registration Act⁴⁵ and the Land Adjudication Act.⁴⁶ In certain material respects, these provisions are substantially different in material respect from the provisions of the LAA in Saint Lucia which fell to be construed in this matter.

[165] In **Graham-Davis** the courts were called upon to determine how section 28 of the Registered Land Act⁴⁷ dealing with overriding interests, ought properly to be construed and applied to a claim to prescriptive title acquired or in the process of being acquired before first registration under the said Act in the name of the person holding the certificate of title issued under the Title by Registration Act. The position under the Antigua & Barbuda Land Adjudication Act, was that the adjudication officer was required to publish a notice declaring that any interest in land held under the Title by Registration Act 'would be carried forward to the new register established under the Registered Land Act 1975.' Also, by the proviso to section 15(2), the adjudication officer was expressly not empowered, in adjudicating rival claims to land, 'to varying any interests in land registered under the Title by Registration Act.' No such provisions pertain under the LAA of Saint Lucia.

[166] In considering the effect of these provisions under the statutes in Antigua and Barbuda, the Board in **Graham-Davis** (per Lord Jauncey of Tullichettle) stated:

"These provisions, it was submitted, showed that where A had acquired a prescriptive title against B who had a registered title the adjudication officer was not obliged to include A's registered title in the record. Furthermore, the disponees had not raised the question of prescriptive possession before the adjudication officer, relying entirely on the conveyances in their favour by John D. Charles with the result that they lost the right to raise the matter before the courts. In any event the appellants' title having been registered under the Registered Land Act any prescriptive period must run from the date of that

⁴⁵ Cap. 429 of the Laws of Antigua and Barbuda.

⁴⁶ Cap. 234 of the Laws of Antigua and Barbuda.

⁴⁷ Cap. 374 of the Laws of Antigua and Barbuda.

registration, which was less than twelve years before the commencement of the present proceedings.

Their lordships have no doubt that these arguments are unsound. **The scheme of the 1975 legislation was that an interest registered under the Title by Registration Act would be registered in the 1975 Land Register without alteration but that such registration would not affect the existence of overriding interests such as rights acquired or in process of being acquired by prescription.** This was an eminently logical approach since many of the overriding interests detailed in section 28 are of a character which might very well not be apparent to an officer visiting the land in the performance of his duties under the Land Adjudication Act. **It would be manifestly unfair that a person who had acquired or was in the process of acquiring an overriding interest in a parcel of land and upon whom no specific notice had been served should forfeit such interests simply because he had not become aware of the publication by the adjudication officer of the statutory notice under section 6 of the Land Adjudication Act 1975.** It was not doubt one of the purposes of section 28 of the Registered Land Act to avoid such unfairness. In their lordships' opinion the proviso to section 15 left the adjudication officer with no alternative but to record that ownership of the Bluff should be vested in the appellants. In doing so he made no decision as to the validity of the disponees' counterclaim, leaving it to them to pursue their remedies through the courts. Indeed, the acceptance by some of the disponees that it would be futile for the adjudication officer to record evidence emphasized that this was the case. **It follows that the respondents did not lose any overriding interests which they or their predecessors in title possessed at the date of the appellants' registration and are in no way barred from seeking now to enforce those interests.** In the event of their success in this appeal it will be open to them to apply to the Registrar of Title for registration as proprietors under section 135(2) of the Registered Land Act." (emphasis mine)

- [167] The appellants also relied on the decision of the CCJ in **George v Guye**. Again, that decision was based on the particular statutory provisions in the Commonwealth of Dominica, in particular the **Title by Registration Act**⁴⁸ ("TRA") and the **Real Property Limitation Act**⁴⁹ ("RPLA"), which are not on all fours with the applicable statutory provisions in Saint Lucia. As Saunders

⁴⁸ Chapter 56:50 of the Laws of Dominica.

⁴⁹ Chapter 54:07 of the Laws of Dominica.

PCCJ stated: 'Resolving the dispute really now requires us to interpret two bits of legislation and to decide how they relate to each other'.

[168] In that case, the respondent (Mr. Guye) had the benefit of a certificate of title to the land in dispute under the TRA. However, for many years the appellant (Mr. George) and his father had been in occupation of a strip of land which formed part of the land to which Mr. Guye held the certificate of title. It was accepted that their occupation of that strip of land had been in excess of 12 years, which occupation Mr. Guye had been aware of, but sought to recover possession of, by action brought in 2007. Mr. George's defence to this claim was that pursuant to the provisions of the RPLA Mr. Guye's paper title to the said strip of land had been extinguished and that he is entitled to resist Mr. Guye's claim for recovery of possession on the basis of their long and continuous possession of the said strip of land. On the other hand, Mr. Guye's claim was based upon his registered certificate of title which he asserted was indefeasible and cannot be defeated by an adverse possessor unless the adverse possessor takes certain procedural steps under section 33 of the TRA, which steps Mr. George had not taken. Mr. Guye was successful both at first instance and in the Court of Appeal.

[169] On appeal to the CCJ, Mr. George's appeal was allowed. In rendering its decision, the CCJ, having reviewed the relevant provisions of the TRA and RPLA, identified two exceptions to the concept of indefeasibility of a registered certificate of title issued under the TRA. The first is fraud connected with the issuance of the certificate; and the second (which was of relevance in the case) was where 'the title of the registered proprietor has been superseded by a title acquired under the RPLA'. Saunders PCCJ, opined at paragraph 12:

"We emphasise the phrase 'under the RPLA' because these words are telling. The TRA could have stated in their stead *under the TRA*, but it did not. It plainly suggests that it is to the provisions of the RPLA that one must turn to determine whether and when "the title

of the registered proprietor has been superseded by a title acquired” by a squatter.”

[170] The learned president of the CCJ underscored that the TRA had by this provision carved out an exception for claims based upon adverse possession. At paragraph 14 he stated:

“In making this exception for adverse possession, the TRA accepts, recognizes and endorses the notion that the ownership rights of a person with a supposedly indefeasible certificate of title may be extinguished, that is to say, supplanted or “superseded”, by a title acquired under the RPLA. Where a registered proprietor has discontinued possession of a parcel of land for a period in excess of 12 years and a squatter has been in possession for that time or more, the title of the registered proprietor suffers precisely this fate. The RPLA disables the registered title owner from further asserting ownership over that land occupied by the squatter. Far from qualifying or limiting this drastic consequence of the RPLA, the TRA carries it a huge step further. Section 33 of the TRA recognizes the ownership rights of the squatter and provides a mechanism, a procedure, for strengthening and formalizing those rights so that they can be made consistent with the Land Register.”

Section 33 provides, in substance, for any person who has acquired or claims to have acquired the ownership of land under the RPLA to make a request to the Registrar of Titles ‘to have a certificate issued to him in lieu of the registered proprietor in the original certificate of title...’; until he or she has in fact obtained a certificate of title to the land, they cannot bring and maintain a claim to such land in the courts; and upon making the proscribed ‘request’ the Registrar shall state a case to the court and must await the receipt of ‘the direction of the Court thereon’.

[171] The CCJ disagreed with the conclusion reached by the Court of Appeal that unless the squatter in adverse possession had engaged the process and procedure under section 33 of the TRA, he or she could not have the benefit of the second exception to indefeasibility of a registered certificate of title. The opinion of the CCJ on the interpretation of the statutory provisions under the

TRA and RPLA, was summarised by Saunders PCCJ at paragraph 23 in this way:

“The above cases [case law from Dominica reviewed by the learned President at paras.16-22] confirm what an ordinary reading of the two statutes reveal. Firstly, the title of a registered proprietor that underlies the certificate is extinguished if the latter allows a squatter to be in possession of the disputed land for the statutory 12 year period. Secondly, such a squatter is unable to maintain, in the sense of commencing or instituting, an action against the registered proprietor without first availing herself or himself of the provisions of section 33 of the TRA. Thirdly, given the specifically stated second exception to the concept of indefeasibility, even if the squatter has not availed herself or himself of the TRA section 33 procedure, the squatter is still entitled successfully to resist in court a claim by the registered proprietor for recovery of the land.”

[172] And at paragraph 25, he observed that:

“A certificate granted to a registered proprietor provides a guarantee that at the time title is obtained that title is good and free from defect. But, given the clearly stated exception the legislation provides, the indefeasibility cloak that certificate affords does not protect the land owner from the risk that a squatter may, by 12 years of adverse possession, extinguish the content of the title of the registered proprietor. The issuance of a title certificate cannot, without more, protect a certificate holder against the risk that his title could be superseded in due course by rights acquired by a squatter. If a registered proprietor elects to discontinue possession, thereby enabling some person to obtain squatter’s rights, **then unless the legislature makes it specifically clear that no such adverse possession can defeat the title of the registered owner**, the title of the registered proprietor will be superseded by the possessory rights of the squatter. **In some Torrens enactments, adverse possession is considered an “overriding interest” in land. In Dominica it is stated differently. The Dominica legislation expressly states that adverse possession under the RPLA is an exception to indefeasibility.**” (emphasis mine)

[173] The learned President considered and analysed, in some depth, the decision of the Privy Council in **Graham-Davis** and concluded that the Court of Appeal’s reliance on the dicta in that case as support for the conclusion which it reached that the registered certificate of title of an owner of land in Dominica

could not be defeated by the possessory rights of a squatter, was misplaced. The President concluded that the **Graham-Davis** case 'is actually in line with the Dominica jurisprudence referred to above.' He continues at paragraph 32:

"An analysis of the TRA suggests that, in relation to the RPLA, the TRA does four things. Firstly, it affirms that RPLA and the rights given to squatters under the RPLA. Secondly, it expressly provides that these rights are an exception to the indefeasibility of the title it grants to registered proprietors. Thirdly, it provides a process whereby a squatter is allowed the sensible option of converting her or his RPLA rights (which previously resided purely as a legal concept) into a tangible and registered certificate of title. And fourthly, it clothes any certificate of title so obtained with the same blanket of indefeasibility as a certificate of title obtained by some other auspicious mode."

[174] At paragraph 33 on the applicability and legal effect of a limitation provision to registered land, the learned President of the CCJ opined:

"We would have expected clear and explicit language in the TRA to yield the result that it relegates a Limitation Act to being inapplicable to one class of land owners (those with registered title) while still being applicable to a different class of owners (those who do not have a registered title)."

[175] It can be seen from the passages from the lead judgment in **George v Guye** that the CCJ reached its decision on the basis of the clear and specific provision of the TRA and RPLA, the former expressly providing that the indefeasibility of title granted under the RPLA is subject to the exception of adverse possession as a carve out provision, and section 33 of the TRA providing a process whereby a person claiming to have acquired ownership of land by way of adverse possession, can apply to displace and cancel the title of the original or then current registered owner and be issued with a certificate of title for the land, which is then cloaked with the identical protection of indefeasibility as the original certificate, subject likewise to the two statutory exceptions of fraud and rights acquired by adverse possession. These provisions in the Dominica statutory implementation of the Torrens system, are indeed similar to those which apply in the Antigua & Barbuda version of the Torrens system. In the case of the latter, protection is provided

to the holder of a certificate of title issued under their TRA by requiring his or her title to be automatically registered as the first proprietor of land brought under the then new registered land system, while expressly excepting and preserving any rights or interests in that land, such as prescriptive rights, by prohibiting the adjudication officer, in determining a dispute between rival claimants to land, from varying any interest in land registered under their TRA. No such carve out provision or exceptions to the indefeasibility protection of a registered title can be found in the Saint Lucia LRA. As mentioned above, the only exceptions to the indefeasibility protection afforded an absolute title, is sections 27 in relation to voluntary transfers, section 28 providing for overriding interests, and section 98 providing for rectification on the basis of fraud or mistake in the registration, including a first registration.

- [176] What then is the prevailing legal position under the LAA and LRA in Saint Lucia in circumstances where a person in actual occupation of the land prior to the LRTP and who failed to claim the said land during the LRTP and before the adjudication record for that section became final? The answer to this question is to be found in the decision of this Court in two appeals **Joseph v Francois; Matty v Francois** from the decision of the High Court in Saint Lucia concerning two claims. In the first claim the respondent Mr. Fanus (represented in the appeal by Ms. Francios as administrator of his estate) sought recovery of possession of land registered in his name from the appellants Joseph and others who contended that the claim was prescribed by 30 years occupation under Article 2103A of the **Civil Code**. They counterclaimed for a declaration that they were entitled to the disputed land by virtue of prescription. In the second claim, the appellants Matty and others claimed declarations that the respondent Fanus was not entitled to the disputed land his title thereto having been obtained by fraud or mistake and sought rectification of the land register under section 98 LRA. Both claims concerned the same parcel of land situate at Riche Bois and recorded on the land register as Registration Quarter Micoud, Parcel No.1627B 391 ("Parcel

No. 1627B 391”)) which had been first registered in the name of Jacob Fanus on 11th March 1987 pursuant to an adjudication record which had become final under the LAA.

[177] At first instance, judgment was granted in favour of the respondent, the registered proprietor of the disputed property. On appeal, this Court dismissed both appeals finding that all grounds were wholly unmeritorious. On the section 28(g) of the LRA issue (rights of a person in actual occupation of the land), this Court held that as it had not been an issue in the court below, and there being no claim to an overriding interest under section 28(g) and, further, relying on its decision in **George Knowles (as executor and beneficiary of the Estate of Oliver Knowles v Elaine Knowles**,⁵⁰ it would be unfair to allow that issue to be canvassed before it as this would render the entire case a wholly different case to the case tried below. On the issue of the appellants having acquired a prescriptive title to the disputed land, this Court held that the same elements required to establish positive prescription apply equally to negative prescription when relied on as a bar pursuant to Article 2057 of the **Civil Code**. Accordingly, where the defence of prescription is raised ‘evidence must be led which satisfies Article 2057 in order to successfully defeat a claim made by a person as owner. The Court found that the evidence led had not ‘rose to the quality and particularity of establishing the requisite elements of prescription. Long occupation in and of itself does not equate to prescription’.

[178] On the question of whether the judge had been correct to find that Mr. Fanus’ registered title to the disputed land obtained by first registration in 1987 under the LRA had interrupted the appellants’ possession pursuant to the terms of the LAA and to the LRTP in Saint Lucia between 1983 and 1987, Pereira CJ characterised the arguments of the appellants based upon Articles 1978, 2084 and 2085 of the **Civil Code** to the contrary as having missed the point, and to completely overlook

⁵⁰ [2006] ECSCJ No. 94 (delivered 18th September 2006).

“the fact that the LRTP was not simply about registration of title but very importantly that all first registrations were predicated upon an adjudication under the LAA. This was so whether it flowed from a contested claim or (as is the case here) an uncontested claim.”

After citing paragraph 39 from the decision of the Board in **Louisien v Jacob** with regard to the LAA and LRA being ‘two interlocking elements of the process of first registration of title’ and observing that the appellants had not claimed the disputed land during the LRTP and had not in the period of years since first registration of the title to the said land challenged the respondent’s registered title thereto (as is the case, in relation to both observations, in the instant matter), the learned Chief Justice opined as follows:

“[25] In our view the learned judge was right to recognize the intervention of the LRTP which by the conjoint effect of the LAA and 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 provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed. It was a holistic scheme implemented for the purpose of bringing certainty to ownership and identification of land in Saint Lucia. It provided for a system of land registration (the “Torrens system”) similar to that undertaken and implemented in the 1970s in a number of Commonwealth Caribbean States and United Kingdom Overseas Territories.

[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’s 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.”

[179] On the issue of rectification of the land register under section 98 of the LRA, this Court held that the said remedy is not an alternative remedy for a claimant who simply failed to avail himself or herself of the process of making a claim to the disputed land under the LAA or availing themselves of the avenues for review or appeal provided for in the said Act. In coming to this conclusion, the Chief Justice reasoned that Articles 1978, 2084 and 2085 of the **Civil Code** do not assist the appellants as they are ‘inapplicable to the prescription defence’ as relied on by them. Accordingly, the Court found that the learned judge was right to hold that the relevant period for the purposes of prescription operating as a bar to Jacob 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.

[180] Dr. Barnett argued that in the instant matter this Court is not bound by its decision in **Joseph v Francois; Matty v Francois** as the statements above by the Chief Justice were made *per incuriam* as they were not essential to the determination of the issues in that case. Also, that the said case and decision did not deal with a claim for overriding interest at all or a claim to an overriding based upon section 28(g) of the LRA concerning rights of a person in actual occupation of the disputed land or in receipt of the income from the said land. In my view while it is correct that **Joseph v Francois; Matty v Francois** was not concerning a claim to an overriding interest under section 28(g) and the late reliance by the appellants in the case on such a claim was not permitted by this Court, it having not been pleaded or relied on in the court below, the principle and ratio of the decision in that case is equally as apt to the instant matter where the appellants have relied on a claim to an overriding interest under section 28(g), and well as to prescription and limitation under 28(f).

- [181] It cannot be gainsaid that the decision in **Joseph v Francois; Matty v Francois** was not concerned with a claim by the appellants/defendants to ownership of the disputed land therein based on having acquired a prescriptive title thereto for the requisite period of 30 years continuous occupation and possession. Whilst this Court, as did the judge below, found the appellants' evidence of prescription unconvincing and unconvincing, this Court also found as a matter of applicable law and principle, that a person seeking post first registration to realise the defence of prescription to a claim by the registered proprietor to possession of the land or to mount a claim to displace the title of the registered proprietor, cannot rely on any period of occupation prior to the conclusion of the LRTP and the registration of the land as a consequence of the adjudication process, in the name of the first proprietor. Furthermore, this is particularly so where such a claimant did not claim the land during the LRTP whether based on documentary title or possessory title thereto. Such a claim can only rely on occupation commencing from the date the adjudication record became final and the registered title vested in the name of the proprietor.
- [182] In my view, it would be nonsensical for the same principles not to apply with equal force to a situation where, as in the instant matter, the appellants, having not made any claim to the disputed land during the LRTP (but in relation to Parcel 37), for the first time, some 21 years later, to make a claim, by way of defence and counterclaim, based upon their actual occupation of the disputed land Parcel 227 prior to its first registration in 1987.
- [183] In relation to this question we are bound by the weight of precedent. The Chitolies' failure to make a claim under the LRTP is problematic not only because of the precedent established by the **Joseph v Francois; Matty v Francois** case, but on the clear language and application of the applicable legislative provisions.

- [184] By virtue of section 8 of the LAA the Chitolies were bound to make a claim to any interest in the disputed lands in order to preserve any rights or overriding interest which they alleged had accrued to them at the time of first registration. Section 8 (1) of the LAA provides that, '[e]very person including the Crown claiming any land or interest in land within an adjudication section shall make his or her claim in the manner and within the period fixed by the notice given under section 6.' (underlining supplied)
- [185] The scheme of the LAA and its operational inter-connectivity with the provisions of the LRA clearly contemplate that a person who claims land or any interest in land, under the LRA, including an overriding interest under sections 23(b), 27, and 28(f) and (g) must have signified that interest during the LRTP pursuant to section 6 of the LAA, by making a claim in the prescribed manner. It is noteworthy that sections 16 and 18 of the LAA make provision for such 'interests' to be captured in the adjudication record. Section 18 stipulates that the authenticated adjudication record comprise all documents submitted to the recording officer during the LRTP, inclusive of any claims to interest in land.
- [186] Importantly, section 16 (1) (a) (ii) and (d) authorise the recording officer to recognise the existence of claims to rights or interests 'in the process of being acquired' or other unregistrable 'overriding interests' by issuing a mere provisional title to the person who appears to him to have a right to title, accompanied by a notation in the record of the details of any adverse or contrary interest of the kind being made by the Chitolies. The recording officer was also required to include any relevant documentation of such adverse claims.
- [187] This notation in the record preserved even after the first registration, any entitlement to claim such an overriding interest in land, by limiting the title to a provisional one thereby leaving the door open for the noted adverse interests

to be invoked. Having failed to make a claim during the LRTP, the Chitolies did not protect that entitlement to maintain a claim to prescriptive title or any other right, title or interest in the disputed land after the first registration of title in 1987.

[188] Bearing in mind that the unlodged 1976 Augustin Survey evidenced that the Chitolies were by then in occupation of a portion of the disputed land (Parcel 227) it follows that between then and first registration under the LRTP, they had been in possession for approximately 10 years. As noted earlier, at the time of the 2006 Claim (which was subsequently discontinued) their occupation had increased to 30 years, and eventually to 32 years by the time the instant claim was filed.

[189] In such circumstances, in my judgment, the law is clear, the first registration of Parcel 46 in the name of NDC as proprietor extinguished any claim which the appellants or any of them had acquired or may have been in the process of acquiring based upon their actual occupation of the said land or receipt of the income from it. Any claim which the appellants' make based upon occupation of and receipt of income from the disputed land Parcel 227 prior to 1987, were and have been extinguished by the conjoint operation and legislative effect of the LAA and LRA. Accordingly, the learned judge was correct to so conclude, and to also conclude that the appellants' claim would have to be reckoned from 1987, whether such claim is based upon long possession, adverse possession or prescription.

Issue 7 – Prescription

[190] The claim in the instant matter was commenced in 2009. In their Amended Defence and Counterclaim filed on 8th September 2016, the appellants at paragraphs 47 claimed to be the lawful owners of the disputed land and, alternatively as persons entitled to be registered as proprietors of the said land by prescription under Articles 2064, 2103, 2103A, 2106 and 2112 of the **Civil**

Code or by overriding interest under sections 28(f) and 28(g) of the LRA. Thus, the appellants mounted in their defence a three-pronged claim to the disputed land or an interest therein. First, as the paper title holders, second, by virtue of 30-year prescription, and third as an overriding interest under 28(f) and (g). Accordingly, they pleaded at paragraph 48 that the respondent claim was statute barred and time barred under the Articles cited dealing with 30-year prescription. In this way, the appellants asserted the 30-year prescription both as a defence (shield) to the respondent's claim, and as a counterclaim (a sword) claiming ownership of and an entitlement to be registered with title to the disputed land.

[191] The learned judge, in considering the issue of prescription both as an overriding interest protected by section 28(f) and as a freestanding claim to ownership and rectification of the land register opined at paragraphs 156 and 157 that:

“It is to be noted that the defendants’ arguments are similar to those rejected by the Chief Justice in **Joseph v Francois; Matty v Francois**. That case is authority for the principle that first registration interrupts prescription, whether or not at the time of first registration the person claiming prescription had already been in possession of land for in excess of 30 years. For the purpose of defeating a claim [as a shield]. The prescription period cannot be considered as commencing prior to the claim from which registered title flows. This would make nonsense of the scheme and render grave uncertainty to the system of registration by title, which is opposite of its intended effect.

I so conclude in spite of certain dicta in the Privy council case of **Graham-Davis v Charles** which the defendants ask the Court to follow. I note that this case is from Antigua and Barbuda and had already been decided when the learned Chief Justice delivered her judgment in **Joseph v Francois; Matty v Francois**. I am of the view that **Graham-Davis v Charles** is distinguishable based on the peculiar legislative provisions of the Antiguan land registration system and the facts of that case.”

[192] The learned judge went on to conclude that in Saint Lucia, unlike in Antigua & Barbuda:

“...[a] first registration, or rather the judicial process under the LRA and LAA during the LRTP which culminated in first registration, interrupts prescription. This is a major distinction between **Joseph v Francois; Matty v Francois** and **Graham-Davis v Charles** and the reason that the latter is inapplicable to Saint Lucia. It would make complete nonsense of the process and defeat the intention of the LRTP if a person could rely on possession before the LRTP to now ground a claim in prescription when the very LRTP gave an avenue for such a claim to have been made and awarded.”

[193] Accordingly, applying the said principles, the judge concluded on this issue that ‘first registration would have interrupted any prescription period existing prior to the LRTP. Therefore, the defendants are precluded from relying on any possession prior to the LRTP to ground their defence of prescription’; and, accordingly, the period on which prescription is to be reckoned is from 23rd June 1987, being the date of first registration of Parcel 46.

[194] Dr Barnett on behalf of the appellants relied on Articles 2103, 2103A, 2106, 2112 and 2064 of the **Civil Code**. He also prayed in aid section 80 of the LRA whereby the Registrar of Lands, on the application of any interested person supported by such evidence as he or she may require, is empowered to give effect to any order of a court by which a person has become entitled to any land by registering that person so entitled as the proprietor. Accordingly, he submitted that should this Court find that the appellants had established a possessory or prescriptive title to the disputed land Parcel 227 and allow the appeal, this Court can order or declare the appellants’ interest in the said land, and the Registrar cannot ignore it but must give effect to such order or declaration pursuant to section 80.

[195] Mrs. Jeffrey-Nelson on behalf of the respondent submitted that the judge was right to conclude that the appellants did not meet the 30-year prescription requirement. She submitted further that the judge did examine all the relevant

evidence in arriving at this conclusion which cannot be impeached. In this respect she remarked that in the roll-out of the appellants' case, 'the goal post was constantly changing'. She cited Articles 2103A and 2057 of the **Civil Code** as it relates to the requirement of the appellants to establish that their occupation was peaceable and unequivocal. However, once the judge had found that they had not met the 30-year requirement, it was unnecessary for her to go on to consider the quality of their occupation or possession of the disputed land. She observed however, that the evidence disclosed that there were 88 other persons in occupation of various parts of Parcel 227 and so the appellants were never in peaceable and unequivocal occupation of the disputed land. Furthermore, while the evidence of all three experts in the case put the appellants' occupation to the northern part of Parcel 227, none of them gave evidence as to how long the appellants were in occupation.

[196] Counsel for the respondent characterised the **James v Planviron** decision of this Court as 'revolutionary' and submitted that the judge had no jurisdiction to deal with a claim based on prescription. As to the prayer in the appellant's counterclaim asking for cancellation of the respondent's registered title to the disputed land Parcel 227, she submitted that can only be achieved under the prescription rules and section 94 of the LRA at this stage. Furthermore, the appellants have not shown that they have an unregistered interest in the disputed land Parcel 227. In this regard, counsel distinguished this case from the decision of the Privy Council in **Edwin M Hughes v La Baia Limited**,⁵¹ a case involving a contract for sale of land in Anguilla. The Board concluded (per Lord Walker) that the second agreement must 'be seen as a disposition, or failing that a contract to dispose, of equitable interests in land'. At paragraph 30, Lord Walker stated:

"The Court of Appeal followed the judge in holding that Edwin was bound by the contract. In the Board's view that was plainly correct, in the sense that he could not disregard equitable interests in the land created by and subsisting under the contract. Edwin was not a

⁵¹ [2011] UKPC 9.

purchaser for value, and his own registered title did not protect him from the obligation to respect subsisting equitable interests (Registered Land Act section 23(c)).”

[197] Counsel for the respondent also cited on this point the decision of this Court in **George v Charlemagne**. In that case, both the judge at first instance and this Court found that the respondent who did not have a registered interest in the parcel of land at Colombette Soufriere in Saint Lucia, he had purchased the land first and was in actual possession of it when the appellant Ulina George had purchased it and registered her title. Accordingly, he was entitled under section 28(g) to enjoy the rights of a purchaser in possession. Byron CJ at paragraphs 12, 15 and 16, opined (in part):

“[12] The policy of the Land Registration Act, however, was to protect the unregistered interests of persons in actual occupation of land. So the operative questions were whether he was in actual occupation? And what was his interest in the land?

...

[15] ...What Counsel failed to recognize is that it was not mere occupation that was relied on to create any rights. What the Act protected were the rights that some one who was in occupation actually had.

[16] The absence of a registered interest upon which the appellant was relied does not have the effect that counsel for Ms. George contended. The clear intent of s. 28(g) of the Act is to give legal effect to the rights that people have if they are in actual occupation of the land but their rights are not registered.”

[198] It is important to note that **George v Charlemagne** was a case concerning registered land, that is land which had already, by virtue of the LRTP, been brought under the LRA at the time when both the appellant and respondent had separately purchased it. The court was not concerned with interests said to have been acquired prior to the LRTP. However, that decision serves to illustrate that an interest acquired after first registration of land in Saint Lucia by virtue of the LRTP in the 1980s, can become subject to overriding interest acquired or in the process of being acquired thereafter, including rights of persons in actual occupation or in receipt of the income from the land.

- [199] Having earlier in this judgment arrived at the same conclusions as a matter of law, it follows that the learned judge was correct in her reasoning and conclusions on these issues and the date from which any period of occupation, possession and use of the disputed property or parts thereof for the purposes of reckoning prescription, whether as a defence or as a free-standing claim to ownership of Parcel 227 or any part thereof, is to be calculated. It also follows that the learned judge was correct to conclude that the period of some 19 years from 1987 up to the commencement of the 2006 Claim or, I would say, 21 years up to this claim being commenced in 2009, falls way short of the 30-year period necessary to acquire a prescriptive title to property in Saint Lucia.
- [200] Accordingly, it is not necessary to consider and determine whether the 2006 Claim constituted an interruption under Article 2085 of the **Civil Code**, as the judge found. I also note that having found that the evidence, including the unlodged 1976 Augustin Survey (commenced on 26th July 1976) established, to the requisite civil standard, that the appellants (in particular Francis) had been in occupation of the disputed land being part of what became Parcel 227, at least as far back as 1976, that would have meant that by the first registration of Parcel 46 in 1987 the appellants had been in possession of the said land for a period of 11 years, thus not long enough to satisfy the period required to establish a prescriptive title to the said land. Also, if the period were to be reckoned to the 2006 Claim commenced on 26th July 2006, the period of the appellants' occupation and use of a portion of Parcel 227 would have amounted to just over 30 years on the basis that they occupied before the commencement of the 1976 Augustin Survey.
- [201] In the **James v Planviron** case, this Court had occasion to consider at some length the applicable procedure in Saint Lucia since the enactment of the LRA for claiming prescriptive title to registered land and, specifically, whether Article 2103A of the **Civil Code** and the Prescription Rules had been impliedly

repealed by the LRA. By a majority decision (Michel JA dissenting), this Court held that the procedures under the Prescription Rules and under the LRA for applying for a prescriptive title to registered land cannot be construed 'in a manner that gives sensible effect to both'; and that it was an ineluctable conclusion that:

"the court's jurisdiction under article 2103A has been rendered redundant and therefore, an exercise in futility, as the registrar is not obliged to accept a declaration of title issued by the court, without more. Neither is the registrar relieved, in any way, of the duty to, himself, be satisfied that the claim for title by prescription has been made out."

[202] Dr. Barnett argued that this case did not deal with a claim to an overriding interest in land and, accordingly, this Court ought not to follow it in relation to this appeal. He also observed that in **James v Planviron** it was held that the jurisdiction of the courts in relation to 'civil suits' is preserved. This observation related to the court's advisory and appellate jurisdiction over decisions of the Registrar with regard to prescription claims under section 94 of the LRA; and to section 115 of the LRA that retains expressly the court's jurisdiction in respect of civil suits and proceedings relating to the ownership or the possession of land or an interest in land, as to forum to try such cases. However, Pereira CJ opined that:

"...the concept of prescriptive involves the recognition of the paper title owner against whom the person claiming is being said to have prescribed. Similarly, it is not a claim for possession since the appellant is not asserting a claim as an owner seeking possession from some other person. Rather, he is seeking to be recognized as owner based on his own possession. A dispute as to ownership can result in a rectification of the land register or a subsequent registration. In my view, therefore, the court retains some jurisdiction, albeit in a different form than that which arises from article 2103A."

[203] Important to the instant matter, it was also held that the jurisdiction to determine claims for prescriptive title to land in Saint Lucia vests in the registrar under section 94 of the LRA and the procedure to be followed is

set out in section 95. As mentioned above, this decision has been appealed to the Privy Council. No hearing or decision has been rendered to date. The learned judge having noted this, opined at paragraph 154 of the judgment that whatever is the outcome of that appeal:

“...it would not avail the defendants as they neither petitioned the Court in accordance with the Prescription Rules nor made application to the Registrar of Lands under the LRA. Therefore, their claim for positive prescription is not properly made and cannot be considered. All that is left for the Court’s consideration is the issue of negative prescription.”

With this statement of principle, I am entirely in agreement. The High Court was not in a position jurisdictionally to entertain a claim by way of counterclaim by the appellants for a prescriptive title to the disputed land based on positive prescription. That jurisdiction rests with the Registrar of Lands to be exercised pursuant to sections 94 and 95 of the LRA and the applicable provisions of the **Civil Code** relating to the period and character of occupation necessary to establish a prescriptive title to registered land.

[204] With regard to prescription being relied on by the appellants as a defence to the respondent’s claim to possession of Parcel 227, this issue was squarely before the trial judge who concluded, correctly in my view, that the appellants had failed to establish the 30-year period necessary. The corollary to this is that the occupation of the disputed land or a part thereof by the appellants after 1987 amounts to a period of 19 years up to commencement of the 2006 Claim and 21 years to the commencement of the claim in this matter in 2009. Does that period give rise to an overriding interest under section 28(f) relating to limitations of action and/or 28(g) relating to either rights of a person in actual occupation of the said land or in receipt of the income thereof? I have already concluded that the appellants have not acquired any rights as persons in actual occupation post 1987 as the said period cannot give rise to a claim based on long possession, adverse possession or prescriptive title. This would lead to the same conclusion in relation to them being in receipt of the

income from the said land for that period, as no legal interest or right in or to the said land is established thereby. This leaves the question of the limitations of actions and section 28(f) of the LRA.

Issue 8 – Limitation of Action

[205] The judge observed at paragraph 170, that the appellants had not pleaded reliance upon the 10-year limitation period in Article 2112 of the **Civil Code** as a defence to the respondent's claim for recovery of possession of the disputed land, but only raised this issue for the first time in their submissions. Accordingly, the judge declined to consider this issue. Article 2112 states,

“He or she who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberated himself or herself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during 10 years.”

[206] Mrs. Jeffrey-Nelson submitted that the appellants had not pleaded 10-year limitation under Article 2112 in their defence and, in any event, that provision cannot apply to the appellants who have no title to Parcel 227 and never did. Counsel also relies on CPR 10.7 which provides that a defendant cannot rely on any allegation or factual argument which is not set out in the defence unless the court gives permission, which permission would usually be given at a case management conference. And the court will not give permission after the case management conference ‘unless the defendant can satisfy the court that there has been a significant change in circumstances which became known only after the date of the case management conference’. Counsel also submitted that a claim for prescription for 10 years is incongruous with a claim based upon prescription for 30 years. Furthermore, the appellants could not change the nature of their possession from that of owner to that of squatter.

[207] Dr Barnett, while not abandoning reliance upon this issue, did not pursue it before this Court in his oral submissions. In my judgment, the judge was quite correct in declining to consider this issue which was raised by the appellants

for the first time in their submissions at the conclusion of the trial and not at a case management conference as the rules require, if they wished to seek permission to rely on it.

Issue 9 – The Counterclaim

[208] As mentioned previously in this judgment, the appellants sought a raft of reliefs in their Amended Counterclaim, including an order cancelling the registration of the respondent as the proprietor of the disputed land now registered as Parcels 441, 444, 446 and 447 registration of themselves as owners and proprietors of the said parcels of land, and for various types and heads of damages such a damages for trespass and compensation for destruction of their farm and improvements.

[209] Having regard to the conclusions reached above in relation to each of the other eight main issues in this appeal, there is no basis upon which this Court ought to overturn the decision in the court below including the dismissal of the Amended Counterclaim and all reliefs sought thereby. Accordingly, I would dismiss this aspect and ground of the appeal.

Disposition

[210] In the premises, I would dismiss the appeal, and affirm the orders made by the judge at paragraph 204 of the judgment. The respondent's cost of the appeal shall be paid by the appellants jointly and severally to be assessed by a judge of the High Court or master at no more than two-thirds of the respondent/claimant's costs in the court below, if not agreed within 21 days.

[211] I express the collective appreciation of the Court for the helpful submissions,
written and oral, by counsel for the parties.

I concur.
Mario Michel
Justice of Appeal

I concur.
Esco Henry
Justice of Appeal [Ag.]

By the Court

Chief Registrar

