

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2012/0051

BETWEEN:

SYLVIA JOSEPH EXECUTRIX OF THE SUCCESSION OF JEROME XAVIER

Claimant

and

- (1) JOHN DOXEY**
- (2) VICTOR DOXEY**
- (3) JOSEPHAR DOXEY**
- (4) ELIZABETH DOXEY**
- (5) MATTHEW DOXEY**
- (6) WINDIE JOSEPH**
- (7) THERESA JAMES**
- (8) BARBARA DOXEY**
- (9) RUPERT BOOLIEU**
- (10) FRANCIS DOXEY**
- (11) JONATHAN DOXEY**
- (12) JOHN DOXEY**

Defendants

Appearances:

Mr. Dexter Theodore Q.C for the Claimant
Dr. Robert Barrow for the Sixth Defendant
Ms. Leandra Verneuil for the Seventh Defendant.

2014: 27th May, 2nd October; 7th October
2020: 30th March

JUDGMENT

- [1] **WILKINSON J.:** On 24th January 2012, the Claimant, Ms. Sylvia Joseph (Ms. Joseph) Qua Executrix of the Succession of Jerome Xavier filed her claim form

and statement of claim for possession of a parcel of land registered as Block 1626B Parcel 216 (Parcel 216) and which Parcel 216 was mutated from Block 1626B Parcel 206 in the Quarter of Micoud. Ms. Joseph stated that title to Parcel 216 was derived from the following activities: (i) entry in the land register of Jerome Xavier on 11th March 1987, as to an undivided one-half share in accordance with the adjudication record of Parcel 1626B 206; (ii) deed of sale by Ioni Paul in favour of Jerome Xavier registered in the Registry of Lands as Instrument No.3788/88; (iii) judgment of the High Court in SLUHCV1997/0058 dated 8th April 2002; (iv) order for partition in SLUHCV1997/0216 made 26th May 2009, (v) deed of partition dated 20th October 2010, registered in the Land Registry as Instrument No.4130/2011. Ms. Joseph sought the following relief: (i) possession of the Parcel 216, (ii) mesne profits at the rate of \$100.00 per month from each Defendant, (iii) interest thereon at the rate of 6 percent from 18th July 2006, until payment, and (iv) costs.

[2] 3 of the 12 Defendants, they being the Sixth Defendant, Mr. Windie Joseph, (Mr. Joseph), the Seventh Defendant, Ms. Theresa James (Ms. James), and the Ninth Defendant, Mr. Rupert Boolieu (Mr. Boolieu) filed defences and or counterclaims to the suit. For the trial Mr. Joseph and Ms. James were the only Defendants who complied with the case management and pre-trial review orders and appeared at the trial.

[3] Mr. Joseph by his defence alleged that he had only recently become aware that Ms. Joseph had a registered interest in Parcel 216. He denied that he occupied Parcel 216 in bad faith and that Ms. Joseph suffered any loss or damage. His defence was that his family as heirs of Jean Pierre Africain were rightfully entitled to Parcel 216. He pleaded that Parcel 216 was mutated from Block 1626B Parcel 73. He alleged Mr. Jerome Xavier, as the person awarded title on behalf of the Heirs of Edmund Africain to the property registered as Block 1626B Parcel 73 and any other properties to which he was awarded title for the Heirs of Edmund

Africain by the Land Adjudication Tribunal obtained the said title by fraud and mistake. The pleaded particulars of fraud and mistake were:

PARTICULARS OF FRAUD

- (i) In obtaining title to Block 1626B Parcel 73 Jerome Xavier relied on declaration of succession of the late Edmund Africain registered on 18th December 1959 in Vol. 109A No. 69377. At Paragraph 1 of the said document the children of the late Edmund Africain were said to be Plummer Edmund Africain and Elizabeth Xavier (born Africain). At paragraph 2 of the said declaration the said Elizabeth Xavier was said to have had lawful children with Pascion Xavier, the said children being: Mde. Augustin Willie, Omegar Xavier, Alphonse Xavier, Neliza Mason, Angelina Daniel, Altrus Mondesir, and Gregona Nervais.
- (ii) According to the Extract from the register of Baptisms, Marriages and Burials of the Parish of St. Lucy's National Shrine. The said Edmund Africain was married to Marie Rose Africain and had four children to wit: Adela; Joseph; Eugene and Francois. Of these four issue of Edmund Africain Adela was apparently also known as Elizabeth Adelaide Edmund and was married to Louis Xavier. The said Adela Africain had seven children with Louix Xavier to wit: Levire, Josephine, Theresia, Marie Rose, Adela, Jean, and Theonil.
- (iii) The grandchildren of Edmund Africain as per his daughter Adela aka Elizabeth are different persons to the said children of Elizabeth Xavier and Pascion Xavier.
- (iv) In premises, the declaration of Edmund Xavier by Jerome Xavier is incorrect.
- (v) The said Jerome Xavier knowing the declaration of succession of Edmund Africain to be incorrect used the same in order to obtain title to the property by fraud during the LRTP thereby depriving persons who had legitimate entitlement thereto.

PARTICULARS OF MISTAKE

- (i) Paragraphs (i) to (iv) in the particulars of fraud are repeated.

- (ii) Both the Land Adjudicating Officer and the said Jerome Xavier may have been under the impression that the said Elxavier married to Passcion Xavier was the issue of Edmund Africain.
- (iii) Jean Pierre Africain is the true owner of the lands claimed by Jerome Xavier, having acquired said land by deed of sale registered in Volume 31 No. 9163.
- (iv) Declaration of Succession by Elizabeth Taliam exhibited hereto shows the entitlement of the heirs of Jean Pierre Africain.

[4] Mr. Joseph in his counterclaim repeated the allegations of his defence and further pleaded that he claimed titled to all properties awarded to Jerome Xavier by the Land Adjudication Tribunal and that they be transferred to the Heirs of Jean Pierre Africain and that if any such properties had been alienated, then he claimed compensation for the loss thereof on behalf of the Heirs of Jean Pierre Africain. He sought the following relief: (i) an order be made to enter the Heirs of Jean Pierre Africain in the proprietorship section of Block 1626B Parcel 216 or any other properties derived from the same as opposed to the current proprietor, (ii) compensation for the loss of any such property as a result of alienation, (iii) further relief as the Court deemed just, and (iv) costs.

[5] Ms. James by her defence alleged that she has been in peaceful and undisturbed occupation of the spot of land whereupon her home was constructed in excess of 61 years and was in lawful occupation. She was born on the spot. She came to the land through her grandmother and mother who lived on the same spot before her. She, herself has been in uninterrupted occupation in excess of 30 years following the death of her grandmother in 1963. She denies wrongful possession and occupation. By her counterclaim she repeated the pleadings of her defence. She pleaded lawful occupation and entitlement to peaceful possession, legal and equitable rights and interest to the spot whereupon her home is erected. Further, she asserted that all improvements to the land and which included a 3-bedroom home, were made in good faith and she would suffer loss and damage if she was ordered to give up possession of the spot. By way of relief she sought: (i) that the claim against her be dismissed, (ii) a declaration that she was entitled to the spot

of land that she has lawfully occupied, (iii) that the spot of land that she occupied be mutated and transferred to her, (iv) damages, (v) further or other relief, and (vi) costs.

The Issues

1. Whether Ms. James has acquired prescriptive title to the “spot” of land whereupon her home is constructed or is a trespasser.
2. Whether Mr. Joseph is entitled to rectification of the Land Register for Parcel 216.

The Evidence

[6] As the Court was going over the evidence in preparation to write this judgment, the Court on 26th July 2018, asked Counsel for Mr. Joseph and Ms. James to: (i) confirm the chronology of events submitted by Counsel for Ms. Joseph, Mr. Theodore Q.C, and (ii) to settle on the family history in line with the family tree diagram. At 19th June 2019, the Parties first issued a response to the Court’s request and then issued a further response on 26th February 2020.

[7] The agreed and settled chronology of events and family tree are as follows:

Date	Event	Ref
1771	Plan du quartier de Micoud by Estribeaud	Bdl C, TAB 2, p 88
1825/26	Edmond African was born	Calculated
1850	Edmond African was baptized, aged 24 with godfather Xavier Pinel and godmother Marie Francaise Alexis	WJ-2 from Fr. Mesias, Parish Priest of Bdl C, TAB 2, p 71
1850	Marie Rose African was baptized, aged 19 with godfather Xavier Pinel and godmother Marie	WJ-2 from Fr. Mesias, Parish Priest of Micoud Bdl C, TAB 2, p 71

	Francaise Alexis	
5.9.1854	Marriage of Jean Pierre and Victoire	WJ-2 from Fr. Mesias, Parish Priest of Micoud Bdl C, TAB 2, p 71
7.11.1854	Marriage of Edmond Africain and Marie Rose Africain	WJ-2 from Fr. Mesias, Parish Priest of Micoud Bdl C, TAB 2, p 71
20.6.1858	Baptism of Adela, daughter of Edmond and Marie Rose	Bdl C, TAB 2, p 71
23.2.1861	Baptism of Joseph, son of Edmond and Marie Rose	Bdl C, TAB 2, p 71
24.9.1865	Baptism of Eugene, son of Edmond and Marie Rose	Bdl C, TAB 2, p 71
14.9.1868	Deed of Sale by Saint Aurin Patrick Fling and Leopold Pallain to Edmond Africain of 3 carres of land bounded on the south by lands of Jn. Pierre Africain. It had been surveyed by Jean Marie Rapin on 28.9.1866 and paid for a long time before the deed	Vol 37. No. 9177 Bdl C, TA1 2, p 10-13 Bdl C, TAB 2, p 84
14.9.1868	Deed of Sale by Saint Aurin Patrick Fling and Xavier Pinel to Jn Pierre Africain of 3 carres of land bounded on the north by lands of Edmond Africain. It had been surveyed by Jean Marie Rapin on	Vol 31. No. 9163 (WJ-10) Bdl C, TAB 2, p 79

	28.9.1866	
21.1.1872	Baptism of Thomas Africain, son of Edmund Africain	Bdl C, TAB 3, p 99
4.2.1872	Baptism of St. Ange Africain, son of Edmund Africain	Bdl C, TAB 3, p 98
6.6.1875	Baptism of Francois, son of Edmond and Marie Rose	Bdl C, TAB 2, p 71
13.7.1880	Adela or Elizabeth Adelaide Edmond married Louis Xavier Bruno	WJ-2 from Fr. Mesias, Parish Priest of Micoud Bdl C, TAB 2, p 71
12.2.1882	Baptism of Jean, son of Louis Xavier and Adelaide Louis	Bdl C, TAB 2, p 77
27.5.1883	Baptism of Adela, daughter of Louis Xavier and Adela Louis	Bdl C, TAB 2, p 76
27.4.1884	Baptism of Theresia, daughter of Louis Xavier and Adele Louis	Bdl C, TAB 2, p 74
31.7.1884	Burial of Edmond Africain	WJ-2 from Fr. Mesias, Parish Priest of Micoud Bdl C, TAB 2, p 71 Bdl C, TAB 3, p 94
23.5.1886	Baptism of Josephine, daughter of Louis Xavier and Adela Louis	Bdl C, TAB 2, p 73
11.9.1887	Baptism of Levirie, child of Louis Xavier and Adela Louis	Bdl C, TAB 2, p 72
21.10.1894	Baptism of Theonil, child of Louis Xavier and	Bdl C, TAB 2, p 78

	Adele Louis	
10.5.1896	Baptism of Marie Rose, daughter of Louis Xavier and Adela Louis	Bdl C, TAB 2, p 75
8.4.1899	Death intestate of Jn. Pierre Africain [the one married to Victoire in 1854?]	Jean Raynold Declaration Bdl C, TAB 2, p 81
4.2.02	Death intestate of Victorie Africain (born Lewis) [the one married to Jean Pierre in 1854?]	Jean Raynold Declaration Bdl C, TAB 2, p 81
6.4.02	Baptism of Philippe, son of Louis Xavier and Adela Louis	WJ-2 Bdl C, TAB 2, p 71
27.3.08	Death of Mrs Edmund Africain	Bdl C, TAB 3, p 97
13.2.12	Birth of Joseph, illegitimate son of Letitia Delices	Bdl C, TAB 3, p 101
8.7.18	Marriage of Joseph Jn Pierre and Therese Lewis legitimizing Rufina (7 yrs), Arnold (4 years), Della (3 years), medina (2 years)	Bdl C, TAB 2, p 87
10.10.1919	Birth of Elizabeth, illegitimate daughter of Plummer Plumer	Baptismal Certificate of Parish of St Lucy for 1919 Bdl C, TAB 3, p 100
12.6.1923	Marriage of Philip Thomas and Marie Plummer by which Elizabeth baptized on 17.11.19 was legitimated	Bdl B, TAB 6, p 33
6.11.24	Death of Louis Xavier aged 72	Bdl C, TAB 2, p 71

16.6.26	Death of Mrs Plummer Edmund	Bdl C, TAB 3, p 95
14.2.33	Death of Mathieu, son of Jn Pierre Africain, allegedly leaving 7 lawful children but no wife mentioned or marriage certificate referenced	Jean Raynold Declaration Bdl C, TAB 2, p 81
June 1941	Death of Adela Elizabeth Adelaide Xavier	
3.1.1942	Ionie Edmund married Everard Paul	Bdl C, TAB 3, p 102
27.4.1943	Marriage of Joseph Delices and Elizabeth Thomas (daughter of Philip Thomas)	Marriage Certificate at Leaf 78 No. 11 of St Lucy for 1943 Bdl B, TAB 6, p 31
15.10.1951	Birth of Theresa James (her mother was Elizabeth Thomas, her father Joseph Delices and her godmother was Ionie Paul)	Baptism and Birth Certificate No 241 Leaf 61 of Micoud for 1951 Bdl B, TAB 6, p 29
5.9.52	Burial of Plummer Edmund	Bdl C, TAB 3, p 96
4.7.58	Death of Omega Xavier	Bdl C, TAB 3, p 93
20.10.59	Declaration by Jerome Xavier of the Succession of the late Edmund Africain	Vol 109A No. 69377 Bdl C, TAB 2, p 69
13.5.63	Death of Plumertide Thomas, aged 75	Burial Certificate Leaf 135, No. 19 for 1963 (Micoud) Bdl B, TAB 6, p 34
10.11.77	Declaration of	WJ-11

	Succession of Jn. Pierre Africain, Victorie Jn. Pierre and Mathiou Jn. Pierre by Elizabeth Taliam before Jean Raynold Notary Royal	Bdl C, TAB 2, p 81-83
15.11.82	Marriage of Kethbert James and Theresa Delices daughter of Joseph Delices and Elizabeth Thomas	Leaf 51, no 9 (Micoud) Bdl B, TAB 6, p 35
7.6.88	Deed of sale by Ioni Paul to Jerome Xavier of her share of 1626B 73	Bdl C TAB 1, p 14
9.6.00	Injunction against Theresa James to stop building	
8.4.02	Judgment by Charles J confirming 1626B 73 and 1626B 86 to Heirs of Edmond Africain binding Heirs of Doxey Claw, Elizabeth Jn Pierre (born Doxey), Stephanie Theodore (born Doxey) and Magdalene Camille	Bdl C TAB 1, p 17
12.1.04	Order by Court of appeal dismissing application by Doxey law, Elizabeth Jn. Pierre, Stephanuie Theodore and Magdeline Camille for extension of time and dismissing their appeal	Civil Appeal No. 11 of 2002 Bdl C, TAB 1, p 25
6.6.06	Letter to Rupert Boolieu aka Orlaw to remove wooden house built that weekend	Bdl C, TAB 1, p 36
8.5.08	Enforcement Notice by DCA for unlawful	Bdl C, TAB 1, p 46-50

	development on parcel 1626B 73	
18.7.06	Notice to Quit to Matthew Doxey	Bdl C, TAB 1, p 41
18.7.06	Notice to Quit to Elizabeth Doxey (she has built a wall house)	Bdl C, TAB 1, p 38
18.7.06	Notice to Quit to John Doxey	Bdl C, TAB 1, p 39
18.7.06	Notice to Quit to Victor Doxey (he has built a wall house)	Bdl C, TAB 1, p 40
18.7.06	Notice to Quit to Windie Joseph (he has built a wall house)	Bdl C, TAB 1, p 37
18.7.06	Notice to Quit to Theresa James	Bdl C, TAB 1, p 42
18.7.06	Notice to Quit to Francis Doxey	Bdl C, TAB 1, p 43
18.7.06	Notice to Quit to John Doxey	Bdl C, TAB 1, p 44
18.7.06	Notice to Quit to Josephar Doxey	Bdl C, TAB 1, p 45
21.7.08	Death of Jerome Xavier	
27.4.09	Report on Survey to court by Allan Hippolyte LLS that number of houses on the land belonging to heirs of Doxey Claw	
26.5.09	Order confirming proposed plan of partition of AJ. Hippolyte in 2008/0216	Bdl C, TAB 1, p 27
26.8.09	Land Register to Jerome Xavier (1/2 share) with	

	absolute title of 1626B 206	
10.2.10	Survey M1783R by Allan Hippolyte showing Elizabeth Talliam (1626B 88) to the south and Hrs Doxey Claw (1626B 140) to the east of 1626B 216 (allocated to Jerome Xavier) in accordance with Claim No SLUHCV2008/0216	Bdl C, TAB 1, p 30-31
15.2.10	Letter to Theresa James to stop septic tank and water tank a day after she started	Bdl C, TAB 1, p 51-52
20.10.10	Deed of Partition awarding parcel 1626B 216 to Sylvia Joseph qua executrix of Jerome Xavier	Bdl C, TAB 1, p 32
31.3.2011	Probate of will of Jerome Xavier	Bdl C, TAB 1, p 53
18.4.11	Letter to John Doxey to stop concrete extension to wooden house	Bdl C, TAB 1, p 59
18.4.11	Letter to Jonathan Doxey to stop concrete extension to wooden house	
5.10.11	Land Register showing Sylvia Joseph qua executrix as absolute owner of 1626B 216	Bdl C, TAB 1, p 60
16.10.11	Plan M1857R by Allan Hippolyte at instance of Sylvia Joseph for James Clark, Windy Joseph and	Lodged on 19.12.11 as Record No. SM578/2011

	David Louis	
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- [8] In light of the agreed and settled chronology of events and family tree, the Court will not repeat same from the individual witnesses.
- [9] Ms. Joseph was born at Planard in the Quarter of Micoud. She is the daughter of Mr. Jerome Xavier and Elizabeth Xavier (née Simon). She is the executrix of Jerome Xavier having been granted probate on 31st March 2011 and so is now recorded in the land register of Jerome Xavier as the proprietor with absolute title to Parcel 216.
- [10] Ms. Joseph recited the matters of Mr. Xavier's title to Parcel 216.
- [11] Ms. Joseph stated that all of the Defendants have erected houses on Parcel 216 and despite letters to leave the land, they have refused to do so. The letters were issued to the Defendants on 6th June 2006, 18th July 2006, 15th February 2010, and 18th April 2011.
- [12] In relation to Ms. James, she said that an injunction was granted against her on 9th June 2000, to stop her building a concrete structure and the Planning Department also served her a stop notice on 8th May 2008. Ms. James stopped for a while and then completed the structure.
- [13] Ms. Joseph said that the Defendants continue to occupy the land in bad faith although they know that the Court and the Land Tribunal have settled the ownership of Parcel 216. As a result of the Defendants acts of trespass, the heirs of Mr. Jerome Xavier have not been able to enjoy Parcel 216.
- [14] Ms. Joseph says that if she were able to rent the house spots then a reasonable rent for each spot would be \$100.00 per month.

- [15] A suit cited was SLUHCV2008/0216 but of which there were no details provided about this suit, not even the name of the parties and whether there was a final decision by the Court.
- [16] Ms. James is a farmer. She has known Ms. Joseph and her father, Mr. Jerome Xavier deceased all of their lives. Herself and Ms. Joseph do not speak. They have never had any problems and Ms. Joseph has never disrespected her.
- [17] According to Ms. James, she has lived on Parcel 216 for the 63 years that she has been alive. She was born on Parcel 216 on 15th October 1951. Her mother, Elizabeth Plumer was also born on Parcel 216 on October 10, 1919. Her maternal grandmother, Plumertide Plumer also known as Plummer and also known as Marie Plummer was also born on Parcel 216. Her grandmother died on May 30, 1963 at age 75 at the time of her death she was 12 years old. She lived with her grandmother. The house that her grandmother built and lived in still exist on Parcel 216. Her mother, Elizabeth Plumer died in 1992.
- [18] Ms. James knew Mr. Jerome Xavier, they were cousins and she describes their relationship as being close. They never had any problems. Mr. Xavier used to visit and spend time with her. He would have breakfast at her home most mornings. In 1981, she built a wall kitchen and Mr. Xavier helped her with that construction. He never stopped her.
- [19] On 15th November 1982, Ms. James married Mr. Kethbert James. She was 31 years old at date of marriage. Their matrimonial home was the home that she had grown up in on the spot on Parcel 216. She, Mr. James and their 5 children lived together on the spot on Parcel 216, until she and Mr. James separated in 1990, and he left the matrimonial home. She remained with the children in the house on the spot. The house was then a 1-bedroom house. At time of trial only 1 daughter, 34 years of age lived with Ms. James.

- [20] Ms. James was aware that Mr. Jerome Xavier and the Heirs of Doxey Claw were in court for title to the land. During this time Mr. Xavier never asked she leave her spot on Parcel 216. She lived peacefully and without any interruptions.
- [21] In 2000, Ms. James was served with court documents. Mr. St. Catherine was her counsel. She vaguely remembers appearing before Justice d'Auvergne. At the time she was building a concrete foundation for the main house because it was in need of repairs, and with her children growing up, she needed to give them a better place to stay. The foundation was already completed when she was served with the court papers. Justice d'Auvergne asked her to stop any further construction on the house. She did not have a copy of the claim or order for the case.
- [22] In 2006, Ms. James remembers receiving a letter giving her the option to purchase the spot on Parcel 216, if she was interested. At the time and even today she is unable to purchase the spot on Parcel 216. She having to care for her children at the time of the letter without the assistance of her husband made it financially difficult for her to consider.
- [23] On receiving the letter, she told Mr. Jerome Xavier that she would like to have title to spot that she occupied. They had no further conversation on the matter.
- [24] In 2010, Ms. James said that she installed a shower and a toilet in the house. It was then that she got the Notice to Quit. She badly needed a toilet and could not continue to live without one. The house was also in need of repairs. With the earthquake the house shook violently and so she needed to repair it.
- [25] Ms. James states that she did not willfully or intentionally disobey the order of the Court when she attempted to renovate the house. She says that in all honesty, she did not remember the injunction nor did she believe that what she was doing was wrong.

- [26] Ms. James says that while she has lived on the land for 63 years, all of her life, 49 years were without any interruption by Mr. Jerome Xavier or anyone else. No one stopped her from building her kitchen, fixing the road to her home, planting trees and flowers. She also had electricity and water installed in her home and the utility bills for these services were in her name.
- [27] According to Ms. James, Ms. Joseph's letter of 18th July 2006, giving her notice to quit the land was about Ms. Joseph wanting to sell the land. She noted that the letter also asked her to indicate her willingness to buy the land. She repeated that her answer to the letter was long and undisturbed occupation on the spot.
- [28] Mr. Joseph by profession is a mechanic. According to him, he erected a concrete dwelling house in 2000 on Parcel 216. To the best of his knowledge and belief, the land belongs to his family starting with Jean Pierre Africain who purchased it as shown by deed of sale Aurin Patrick Fling and Xavier Pinel to Jean Pierre Africain dated 14th September 1868, and registered in the Office of Deeds and Mortgages in Volume 31 No. 9163. Jean Pierre Africain was his great-great grandfather, his mother, Alice Joseph was the great-grand-daughter of Jean Pierre Africain. His maternal grandmother, Elizabeth Taliam registered a declaration of succession. Mr. Joseph exhibited the deed. He says that the deed is proof of the entitlement of the heirs of Jean Pierre Africain to the land on which his house is erected.
- [29] According to Mr. Joseph, he obtained the permission of his grandmother, Ms. Elizabeth Taliam and two granduncles of the same name, Joseph Pierre, they being the elders of Jean Pierre Africain family, to build his house on the land.
- [30] Mr. Joseph recalls being served with a letter around 2006, and which stated that he had built his house on land belonging to Mr. Jerome Xavier. He ignored the letter believing this to be absurd as to the best of his knowledge and belief the land belonged to his family it having been purchased by his ancestor Jean Pierre Africain in the late 19th century.

- [31] Mr. Joseph said that prior to being served with the claim, that he did not know that ownership of the land had been vested in Mr. Jerome Xavier. To his mind, in order for the land to be vested in Mr. Jerome Xavier there must have been some fraud or otherwise, some incorrect information which was not adequately challenged and which may have been presented to the court. He said that his mother, Ms. Alice Joseph was far more knowledgeable with respect to the information surrounding this claim.
- [32] Ms. Alice Joseph in her evidence sought to lay out the history to the land. The Court recalls that at this juncture, there is an agreed chronology on the facts.
- [33] Mr. Joseph Martyr (Mr. Martyr), a farmer, was called as a witness for Mr. Joseph. At 2014, when he signed his witness statement he was 65 years old. He knows all of the Parties to the claim.
- [34] Mr. Martyr said that Mr. Jean Pierre Africain was his great-grandfather. His mother, Ms. Ivina Jean Pierre, is the granddaughter of Jean Pierre Africain. His mother's father's name was Mathieu Joseph Jean Pierre Africain. His grandfather, the said Mathieu Joseph Jean Pierre Africain, was the sole child of Jean Pierre Africain.
- [35] He said that during the period of the Land Registration and Titling Project (LRTP) in the late 1980's, he was present on the last day when the LRTP officials were on the land in the area trying to determine which persons had claims on the land. On that day, Mr. Wilson was the only LRTP official present. A few persons claiming land in the area were present. Those persons included John Pierre (whose mother was a Doxey), Jerome Xavier and himself. He arrived around 3:30 p.m. to present the deed of sale by which Jean Pierre Africain obtained the land. He heard Mr. Wilson ask Mr. Jerome Xavier to present his papers. Mr. Xavier presented a paper which Mr. Wilson appeared to read. Mr. Wilson then asked Mr. Xavier the following questions: "Where is Mr. Trim's boundary here?" and "Where is the dry ravine?"

Mr. Xavier did not answer any of these questions. Mr. Wilson handed the document back to Mr. Xavier. He later heard that Mr. Jerome Xavier hired the same lawyer that his aunt, Elizabeth Taliam had hired to claim the land. To the best of his knowledge, Mr. Xavier was not from the area, he knew him to live in Roseau in the Quarter of Anse la Raye.

[36] It is a fact that during the land registration project that Block and Parcel 1626B 73 (part only of the land forming the subject matter of this claim) was awarded to the Heirs of Edmund Africain and they successfully appealed to the Land Adjudication Tribunal and were also awarded Block 1626B Parcel 86. The Doxeys not being satisfied with the decision of the Land Adjudication Tribunal filed **Claim No. 58 of 1997 (1) The Heirs of Doxey Claw, (2) Elizabeth Jn. Pierre (nee Doxey), (3) Stephanie Theodore (nee Doxey), (4) Magdeline Camille v. (1) Lester Martyr (former Registrar of Lands) represented by the Attorney General, (2) Heirs of Edmund Africain represented by Jerome Xavier.** This case greatly assists the Court. There Hariprashad-Charles J recorded that both the claimants and the second defendant owned large portions of land north of the Anse Ger River in an area known as Beaufond, Planna or Dugard in the Quarter of Micoud and that disputes had arisen between the parties. On 1st October 1987, the Land Adjudication Tribunal on hearing an appeal against the provisional title which had been granted made the award which she cited. Hariprashad-Charles J after going through the evidence and accepting that of the Land Registrar at the time, Mr. Lester Martyr, she said:

“[19] Mr. Martyr stated that as a result of the decision of the Tribunal, the area originally numbered as parcel 69 was subdivided and mutated to form parcels 86 and 87 on the Registry Map 1626B, Accordingly and in compliance with the award of the Tribunal, two land registers were opened: (a) Land Register No. 1626B 86 in the name of Heirs of EDMUND AFRICAIN was entered in the proprietorship section and (b) Land Register No. 1626B 87 in the name of the Heirs of DOXEY CLAY were entered in the proprietorship section. In fulfillment of the further award of the Tribunal, Land Register No. 1626B 88 was opened and the awards to JN PIERRE and SAMMY are correctly reflected in the proprietorship section.

[20] Mr. Martyr explained that he issued a directive on 14th day of April 1988 to amend the REGISTRY MAPS 1625B and 1626B pursuant to the decision of the Land Adjudication Tribunal in order to label the areas awarded to the successful parties. In this regard, he referred to the Combination and Subdivision (Mutation) Order No. 143/88 exhibited. He stated that after opening the Land Registers Nos. 1626B 86 1626B 87 and 1626B 88 aforementioned and finalization of the REGISTRY MAPS, it was pointed out by Mr. Earl Cenac Licensed Land Surveyor that there was a clerical error in placing the labels on the REGISTRY MAP 1626B in respect of the areas awarded by the Land Adjudication Tribunal; that is to say:

- (a) The names entered in the proprietorship section to wit, AFRICAIN, in respect of the Land Register No. 1626B 86 did not correspond to the area in fact awarded to the AFRICIAN by the Tribunal which in error was labeled 87 and which should have been labeled 86 on the REGISTRY MAP 1626B.
- (b) The names entered in the proprietorship section to wit, DOXEY CLAW, in respect of the Land Register No. 1626 B 87 did not correspond to the area in fact awarded to DOXEY CLAW by the Tribunal which in error labeled 88 and which should have been labeled 87 on the REGISTRY MAP 1626B.
- (c) The names entered in the proprietorship section to wit, JN PIERRE and SAMMY, in respect of the Land Register No. 1626B 88 did not correspond to the areas in fact awarded to JN PIERRE and SAMMY by the Tribunal which in error was labeled 86 and should have been labeled 88 on the Registry MAP 1626B.

[21] In a correspondence dated 19th day of January 1989, Mr. Martyr confirmed a clerical error in numbering the parcels on the Registry Map 1626 to Mr. Earl Cenac. Mr. Martyr however asserted that the corrected Registry Map 1626B properly reflects the award of the Land Adjudication Tribunal and that his decision to amend the clerical error on the REGISTRY MAP was warranted and done in accordance with Sections 15 and 97 of the Land Registration Act 1984 (as amended) in order to ensure that the Land Registers Nos. 1626B 86, 1626B 87 and 1626B 88 correctly and accurately correlate with the numbers of the parcels on the REIGSTRYMAP 1626B.

[22] Looking at the evidence as a whole, I cannot find that the Claimants have satisfied this Court that the Registrar of Lands erred in the rectification of the Land Register. In my view, the awards of the Land Adjudication Tribunal are accurately and truly

reflected in the Land Register. Mr. Martyr was indeed the most critical witness in the instant case. He was candid and forthright in his testimony. Under intense cross-examination by Mr. Foster, the witness remained calm and collective. He impressed me as a witness of truth.

[23]

[24] As earlier stated, I am of the firm view that the Court has no jurisdiction to entertain these proceedings since the Claimants have failed to lodge an appeal against the decision of the Registrar of Lands. In fact, up to the present day, no appeal has been lodged.” (My emphasis)

[37] Justice Hariprashad-Charles’ decision was appealed and the appeal was dismissed.

The Law

[38] At Saint Lucia there were passed 2 Acts, the **Land Adjudication Act** in 1984 and the **Land Registration Act** in 1985. The 2 Acts established registration of title which was a new system of conveyancing and was designed to replace the traditional system in its entirety. Its prime object was to substitute a single established title, guaranteed by the State, in place of the traditional title which must be separately investigated on every purchase at the purchaser’s risk¹.

[39] The **Land Adjudication Act 1984** provides:

“8 Claims and attendances

- (1) Every 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.
- (2) Every person including the Crown whose presence is required by the adjudication officer, demarcation officer or recording officer, as the case may be, shall attend in person or by agent at the time and place specified.
- (3) If any such person fails to attend in person or by the agent after written notice has been given, the demarcation, recording or other proceeding may continue in his or her absence.

¹ The Law of Real Property, Sir Robert Megarry and HWR Wade 5th ed. p. 200.

...

15. Disputes

- (1) If in any case –
 - (a) there is a dispute as to any boundary whether indicated to the demarcation officer or demarcated or readjusted by him or her, which the demarcation officer is unable to resolve, or
 - (b) there are 2 or more claimants to any interest in land and the recording officer is unable to effect agreement between them, the demarcation officer or the recording officer as the case may be shall refer the matter to the adjudication officer.
- (2) The adjudication officer shall adjudicate upon and determine any dispute referred to him or her under subsection (1), having due regard to any law which may be applicable, and shall make and sign a record of the proceedings.
- (3) Where the adjudication officer has adjudicated on any dispute under this section the Minister or any other person who is dissatisfied with the decision of the adjudication officer shall give written notice to the adjudication officer of his or her intention to appeal.

....

24. Appeals

- (1) Any person, including the Minister, who is aggrieved by any decision of the Land Adjudication Tribunal and desires to question that decision or any part of that decision, may within 2 months from the date of the decision or within such extended time as the court, in the interest of justice, may allow, appeal to the court.
- (2) On any such appeal, the Court of Appeal may make such order or substitute for the decision of the Land Adjudication Tribunal such decision as it may consider just and may under the provisions of the Land Registration Act, order rectification of the register.
- (3) (3) ...
- (4) Any person, including the Minister, appealing under subsection (1) shall give notice to the Registrar of his or her intention to appeal and the Registrar shall enter a restriction under the provisions of the Land Registration Act, in every register affected by the appeal.”

[40] The Court could do no better than to seek the assistance of d’Auvergne J. in how she described the passage of the 2 **Acts** and their effect on all land at Saint Lucia. In **Suit No. 471 of 1997 Elsee Juliet (born William) the widow of the Alfred Juliet who sues as (1) the sole Administratrix of the succession of the late Alfred Juliet and (2) one of the lawful heirs of the said Alfred Juliet deceased V. Julietta Louie et al.** d’Auvergne J. said:

- [3] During the years 1984 to 1987 certain land reform measures were introduced into St. Lucia whereby the ownership of land came to be determined only by registration; land would be adjudicated upon by an adjudication officer and would later be registered. In 1984 two Acts were passed namely the **Land Adjudication Act** and the **Land Registration Act**.
- [4] Consequent upon the passing of these two acts and their later amendments all St. Lucians, both home and abroad, registered all land to which they had title, those which they occupied or had in their possession for many years. The result was that many people were claiming the same piece of land.
- [5] But the law in its wisdom devised sets of procedure for determination of such disputes between claimants. A dissatisfied claimant would firstly seek redress from the Land Adjudication officer. If he was still dissatisfied he may then appeal to the Land Adjudication Tribunal and if still dissatisfied, he may within two (2) months of the date of the certificate of the Land Tribunal, appeal to the Court of Appeal, who on any such appeal may make such order, or substitute for the decision of the Land Adjudication Tribunal, such decision as it may consider just.
- ...
- [33] Section 97 of the Land Registration Act No. 12 of 1984 set out the types of cases where a Registrar of Lands can rectify the Land Register. Section 98 of the **Land Registration Act** reads as follows:
- ‘98(1) subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of the proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”
- [34] By the decision of the Adjudicator dated 1st April 1986, between Mrs. Francis Sebastien, Mrs. John Louis and Harris Stephen acting on behalf of Thomas Juliet, the son of Alfred Juliet, the land was awarded to Mrs. Francis Sebastien and Mrs. John Lewis with provisional title dating from 6th January 1971. Subsequently on the 15th day of May 1991, by instrument number 1612/91 the registration was converted to absolute title. That is six years after the decision of the Adjudicator. The Plaintiff, wife of Alfred Juliet fully knowing or supposed to have known of the decision never used the procedures set down by the **Adjudication Act** nor the **Registration Act**.

...

- [36] To compound this the Plaintiff, having filed this action eleven years after the decision of the Adjudicator and despite the pretence of seeking declaratory orders, she is in reality asking the Court to rectify the land register and make her along with her alleged lawful heir absolute owners of the land in question.
- [37] It is to be noted that the statement of claim does not deal with the rectification on the ground of fraud or mistake, though Learned Counsel for the Plaintiff argued that an amendment should be granted to allow its inclusion.
- [38] It has been repeatedly stated since **Skelton v. Skelton** [supra] that a finding of fact reached by an Adjudicating officer and entered in the land register could not be challenged in the High Court. The correct procedure is an appeal in accordance with the procedure laid down viz. Section 23 of the **Adjudication Act 1984**. The Plaintiff should have appealed first to the adjudicating officer, then to the Land Adjudicating Tribunal and if still dissatisfied to the Court of Appeal within the time frame set out by the said Section 23.” (My emphasis)
- [41] On the issue of whether Mr. Joseph could succeed on a plea of mistake, the Court was referred to the judgment of Byron JA in **Anguilla Civil Appeal No. 6 of 1993 James Ronald Webster & Anr v. Beryl St. Clair Flemming**. Unfortunately, in the copy of the authority provided to the Court pages 10, 12 and 14 were missing several lines of the texts.
- [42] A second case submitted by Counsel on the issue of mistake was **Saint Lucia Civil Appeal No. 11 of 1983 Heirs of Hamilton La Force v. Attorney General etc al**. There Byron JA said at p. 5 et seq:
- “It is already well settled that the jurisdiction to rectify the register of land is not to be used as an indirect method of appeal against decisions taken under the Land Adjudication Act 1984, and that the term “mistake” in section 98[1] of the Land Registration Act 1984 does not include a failure to employ the appellate procedure laid down by the Land Adjudication Act 1984 as amended.
- In the British Virgin Islands case of **Skeleton v. Skeleton** [1986] 37 WIR 177 the only ground of appeal argued was whether the High Court had jurisdiction to amend, reverse or vary the award of an Adjudication Officer in the absence of an appeal against his decision. Section 140 of the Land

Registration Ordinance is identical to section 98 of the Act in St. Lucia. Robotham C.J said:

'I would agree that if the expression of the final decision of the Adjudication Officer was incorrectly recorded on the Land Register, section 140 could be resorted to. I cannot, however, accept that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact based upon his own inquiry, simply because the Judge sitting in an original jurisdiction is of the opinion that his findings were erroneous.'

This was applied in **Webster v. Fleming** Anguilla Civil Appeal No. 6 of 1993 where I expressed the opinion of the court at p.12:

'In my Judgment any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in the adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process.'

In this case the fact alleged on the pleading was an inadvertence to claim under the Land Adjudication Act 1984, and the fact found by the learned trial Judge on the evidence was a failure to appeal from an unfavourable finding by the relevant Officer. In my view neither of these factors could invoke the jurisdiction to order the rectification of the land register under section 98 of the Registered Land Act.

The appellants did not employ any of the appellate procedures under the Land Adjudication Act 1984, and cannot rely on that failure as the basis of his application to the court to order the rectification of the land register."

[43] In Privy Council Appeal No. 93 of 2007 **Sylvina Louisien v. Joachim Rodney**

Jacob Lord Walker of Gestingthorpe said:

"37. Barrow JA, in a clear and careful dissenting judgment, agreed with the majority, in line with previous authority that the Court's jurisdiction to rectify the register under section 98 of the LRA depends on the mistake in the registration process. He analysed the judgment of Edwards J and drew attention to the speculative conclusions which their Lordships have already mentioned. Thus far in his judgment his reasoning and conclusions are in their Lordships' opinion to be preferred to those of the majority. But in their Lordships' view Barrow JA went too far the other way in his conclusions (para.53): ...

...

40. It is clear that rectification of the register under section 98 of the LRA can sometimes be ordered in respect of a first registration. That is clear from the words “subject to the provisions of the Land Registration Act” in section 23 of the LAA, and from the references to first registration in section 98(1) and 99(1)(b) of the LRA. 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, have failed in a contested claim before the adjudication officer, omitted to use the avenues for 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 simply from a correct understanding of the statutory machinery (see Byron JA in *Portland v. Joseph*, 25th January 1993, Civ. App. No. 2 1992.
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 **Skeleton v. Skeleton** (1986) 36 WIR 177, 1818-182; **Portland v. Joseph**; and **Webster v. Fleming**. Their Lordships consider that this principle is correct and useful statement of law, but 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 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.
43. Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to a nullity) in the process of adjudication. That mistake gets carried forward to the registration process, since the staff of the Land Registry are presented with a record which does not correctly embody the adjudication officer’s

final decision. Again, rectification is available. That is **Webster v. Fleming**.

44. In their Lordship's 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 enquiries, 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."

- [44] Ms. James has based her defence and counterclaim on continuous, uninterrupted peaceful possession and occupation in excess of 30 years. In **Hodgson v. Marks [1970] 3 ALL ER 513** it was said that control had to be actual physical possession or its use, and a person was to be held to be "in actual occupation" only if the occupation was recognizable as such and apparent to a purchaser". In **Newcastle CC v. Royal Newcastle Hospital [1959] 1 All ER 734** it was said:

"Occupation is a matter of fact and only exists where there is sufficient measure of control to prevent strangers from interfering."(My emphasis)

- [45] Possession has been defined in the **Civil Code** as:

"2056. Possession is the detention or enjoyment of a thing or of a right, which a person holds or exercises himself, or which is held or exercised in his name by another. (My emphasis)

2057. For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.

2058. A person is always presumed to possess for himself and as proprietor, in the absence of proof that his possession was begun for another. (My emphasis)

2059...

2060. Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription.

2063. An actual possessor who proves that he was in possession at a former period is, in the absence of proof to the contrary, presumed to have possessed during the intermediate time...”

[46] Ms. James claim to a spot on Parcel 216 is based prescription and which in short means long enjoyment. The **Civil Code** defines prescription as:

“2047. Prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law.

In positive prescription title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession.

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law.

...

2083. Prescription may be interrupted either naturally or civilly.

2084. Natural interruption takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing, either by the former proprietor or by any one else.

2085. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when personal service is not required, creates a civil disruption....

2103. All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.

2103A (Ad.34-1956). Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court.”

Findings and Analysis

- [47] As noted prior, not all of the Defendants defended the claim. Those who did not defend were: Mr. John Doxey (#1), Mr. Victor Doxey, Mr. Josephar Doxey, Ms. Elizabeth Doxey, Mr. Matthew Doxey, Ms. Barbara Doxey, Mr. Rupert Boolieu (he filed a defence but failed to appear at trial), Mr. Francis Doxey, Mr. Jonathan Doxey, and Mr. John Doxey (#12). They not having defended the claim and so have not given the Court an opportunity to hear them, the Court will enter judgment against them.
- [48] The big picture seen in the agreed chronology of events and family tree was most helpful and insightful to the Court.
- [49] Ms. Joseph as Qua Executrix of the Estate of Jerome Xavier has demonstrated a clear trail of activities at the background of Mr. Xavier's title to Parcel 216.
- [50] Ms. James does not challenge Ms. Joseph's father, Mr. Jerome Xavier's title to Parcel 216 whether by inheritance or otherwise. What she, however, does says instead, is that his ownership of Parcel 216 was subject to her long occupation on a spot on Parcel 216. She has no interest in the whole of Parcel 216.
- [51] The chronology settled by all Counsel for the Parties show that Ms. James was born at 15th October 1951. According to Ms. James, she was born on the very spot that she now occupies. There was no denial from Ms. Joseph that Ms. James was born on the spot she now occupies on Parcel 216.
- [52] Ms. James asserts that her mother, Ms. Elizabeth Thomas (dec'd) was also born on the very same spot and so too did her grandmother, Ms. Plumertide Plumer aka Plummer Plummer. Her family history of being on the spot of Parcel 216 she says is long and over multiple generations.

- [53] According to **Newcastle CC v. Royal Newcastle Hospital**² occupation is a matter of fact and only exist if there is sufficient measure of control to prevent strangers interfering. (My emphasis)
- [54] At 2000, when Ms. James was approximately 49 years of age, there was an injunction issued to stop Ms. James building. According to Ms. James, she recalled appearing before d'Auvergne J. and being told not to carry out any further construction on the house. She was at the time seeking to convert the foundation of her home to concrete. There was not disclosed to the Court any details about this suit, not even the Parties. The Court is also uninformed as to whether the injunction was an interim injunction or a permanent injunction.
- [55] Since Ms. James recalls being told to stop her foundation, and the matter of the injunction is listed on the agreed chronology of events, the Court will accept that the injunction was an attempt to interrupt Ms. James' occupation but without any details about the suit, and as to what happened in the suit, it holds little weight before the Court. The Court recalls that an interim injunction, if that was what it was, would have been granted on different principles to those of a permanent injunction and also it would have had an expiry date unless the matter went to trial and if deemed suitable, a final injunction would have been granted. There is no proof of a final injunction against Ms. James.
- [56] There followed the notice to quit dated 18th July 2006, and which was served on Ms. James, when she was 55 years of age. This notice to quit was issued in the sole name of Mr. Xavier and required that possession be delivered by 31st May 2007.
- [57] Ms. Joseph refers to the stop notice issued by the Planning Department. The Court does not believe that this notice would have been to assist with the dispute between the Parties as that is not the role of the Planning Department. More than

² Ibid.

likely, the stop notice would have been due to the fact that Ms. James was seeking to build without a building permit.

- [58] Mr. Jerome Xavier died on 21st July 2008. Prior to his death and during the same year of his death, Mr. Xavier had filed claim SLUHCV2008/0216 Jerome Xavier v. Heirs of Augustin Willie et al for partition per the plan of Mr. Allan Hippolyte LLS dated 27th April 2009. Approximately 10 months after Mr. Xavier's death, on 26th May 2009, the Court made an order for partition per Mr. Hippolyte's plan. Approximately, 11/2 years later, on 20th October 2010, there followed the deed of partition for Parcel 216 to Mr. Xavier's Qua Executrix.
- [59] The Court lays out this background as it shows that at 18th July 2006, there was not even a plan for the land of Parcel 216, and which land would eventually be deemed Mr. Xavier's own on a partition order. The Court does not believe that notice to quit dated 18th July 2006, can stand against Ms. James since Mr. Xavier did not hold absolute title to Parcel 216 at the time but was still a co-owner at the time of its issuance. No evidence was received as to the position of the other co-owners and whether they too wished for Ms. James to leave her spot on Parcel 216.
- [60] Should the Court be wrong, then there is the issue of Ms. James long occupation. She was 49 years of age when the first proceedings in relation to the injunction were brought against her. She was born on the spot, she married at 15th November 1982, and her husband came to live in her house on the spot. She had 5 children on the spot.
- [61] The Court is satisfied that Ms. James although 49 years before she appeared in Court and was told to stop converting her foundation to concrete, and who would have been deemed an adult for at least 28 years prior, had up to that time undisturbed possession, enjoyed exercising rights over her spot and enjoyed it.

Indeed, she brought her husband to the spot and all of her children were born on the spot.

[62] The Court also observes that this suit was filed some 6 years after the issuance of the notice to quit.

[63] The Court will order that there be surveyed and transferred to Ms. James the spot upon which she resides.

[64] Mr. Joseph's challenge unlike that of Ms. James is not based prescription. He claims to be an heir of Jean Pierre Africain and that he and the other heirs of Jean Pierre Africain have an interest in Parcel 216. In this regard, there is the decision of Hariprashad-Charles J in Claim No. 58 of 1997 The Heirs of Doxey Claw et al v. Lester Martyr (former Registrar of Lands) and (ii) Heirs of Edmund Africain represented by Jerome Xavier. It appears to the Court that Mr. Joseph seeks to have the Court revisit matters which are res judicata following the dismissal of the appeal of Hariprashad-Charles J's judgment.

[65] Secondly, the Court is guided on the limitation of the Court on what is sought in Mr. Joseph's defence by the authorities cited. The limitation of the Court is clear where the procedure for challenge is provided for in the **Land Adjudication Act** and rectification in the instance of fraud or mistake pursuant to section 98, if any, in the **Land Registration Act**. The Court cannot usurp those procedures.

[66] Whereas here, Mr. Xavier was able to prove the title of Mr. Edmund African, and follow on from there, the issue of fraud does not arise.

[67] In the instance of an allegation of mistake, the Court can only order rectification of the Land Register pursuant to section 98 of the **Land Registration Act** and as such, in very limited instance as seen in the authorities cited. The Court could not order a rectification which would in effect change the findings of the Land

Adjudicator, any rectification ordered would only be to correct or in effect affirm the findings of the Land Adjudicator. In this instance, the findings of the adjudicator were tested in the suit before Justice Hariprashad-Charles.

[68] For the reasons above, Mr. Joseph's defence must be struck out and judgment entered for Ms. Joseph.

[69] **Court's Order:**

1. Judgment is entered against Mr. John Doxey (First Defendant), Mr. Victor Doxey, Mr. Josephar Doxey, Ms. Elizabeth Doxey, Mr. Matthew Doxey, Mr. One Sammie, Mr. Randy James, Ms. Barbara Doxey, Mr. Rupert Boolieu and Mr. John Doxey (Twelfth Defendant). These Defendants are to give possession of wherever they are in occupation on Parcel 216 within 6 months of the date of this judgment.
2. The Defendants cited in the order 1 immediately above, are to pay mesne profits at the rate of \$100.00 per month starting from the date of this judgment until they deliver up possession and vacate Parcel 216.
3. Mr. Joseph's defence is struck out and judgment is entered for Ms. Joseph against Mr. Joseph. Mr. Joseph is to give up possession of wherever he occupies on Parcel 216 within 6 months of the date of this judgment.
4. Mr. Joseph is to pay mesne profits at the rate of \$100.00 per month starting from the date of this judgment until he delivers up possession and vacates Parcel 216.
5. Ms. Theresa James is declared to be the owner of the spot on Parcel 216 whereupon her home is established. Within 6 months of this judgment a plan is to be prepared and settled of the spot ensuring protection of the entrance to her home and with a perimeter of 8 feet all around the house. All costs and fees associated with preparation of the plan and deed to transfer for the spot of land are for Ms. James' account. Should Ms. Joseph fail to execute the deed of transfer for Ms. James within 14 days of it being presented to her for

execution then the Registrar of the High Court is to execute the deed of transfer.

6. Interest is awarded at the rate of 6 percent on all sums due to Ms. Joseph from the date on which they start to accrue.
7. Prescribed costs are ordered against each of the Defendants set out in order 1 above, and against Mr. Joseph and same is payable within 90 days.
8. While the Court has made an order in favour of Ms. James, the Court will not order any costs against Ms. Joseph as the Court believes that there is sufficient benefit to Ms. James in its earlier order.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar