

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

**GRENADA**

**GDAHCVAP2018/0016**

**BETWEEN:**

**[1] SARAH TANNIS-JOSEPH  
(Executrix of the Estate of Theresa Joseph)**

**[2] AGATHA DE COTEAU**

Appellants

**and**

**DOROTHY ABRAHAM**

Respondent

**Before:**

The Hon. Mde. Louise Esther Blenman  
The Hon. Mr. Mario Michel  
The Hon. Mr. Paul Webster

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

**Appearances:**

Mr. Alban John for the Appellants  
Mr. Ruggles Ferguson for the Respondent

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2019: October 31;  
2021: February 10.

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*Civil appeal — Adverse possession — Paper titles — Relativity of titles — Fraud - Sections 22(f) and 28 of the Trustee Act, Cap. 329 of the Laws of Grenada — Section 20 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336 of the Revised Laws of Grenada — Whether judge erred in not treating case as one based on adverse possession — Whether judge erred in not finding that respondent's claim was based on fraudulent documents and setting aside the documents — Whether judge erred in dismissing appellants' claim to be declared as owners of the disputed properties — Having dismissed the claim and counterclaim, whether judge erred by not fashioning a remedy for the matters in dispute between the parties as required by section 20 of the Supreme Court Act*

In 1866 the late Joseph Phillip, the appellants' grandfather, purchased property at Beausejour Estate, Petit Martinique, comprising approximately 61 acres ("the Estate"). Joseph died testate, having devised by his will two acres out of the Estate to his wife

Sayfish Joseph, and the remainder of the Estate to his eight children to 'share and share alike'. Adella De Coteau, one of Joseph and Sayfish's children, was allotted a portion of the land from the Estate and she also purchased the share of the heirs of her deceased brother, Noel Joseph. Adella died testate in 1978 and devised all her lands to her three daughters, Theresa Joseph and Agatha De Coteau (the appellants) and Agnita Kent. The appellants claim that the disputed properties form a part of the lands acquired by Adella and later transferred to them.

The respondent, Dorothy Abraham is the daughter of one of Adella's two sons, Stephen De Coteau, who died testate in 1986 leaving his estate to Dorothy. In August 2009, Dorothy brought a claim in the High Court against Theresa and Agatha seeking, among other reliefs, a declaration that she is the owner of the disputed properties. Theresa died prior to the commencement of the trial and Sarah Tannis-Joseph, the executrix of her estate, was substituted as a defendant. Dorothy contended in the High Court that her father was the owner of the disputed properties, having been gifted part of the disputed properties by his mother and the rest being purchased for him by his father. Dorothy alleged that she was then vested with the legal title to the disputed properties by virtue of a Deed of Conveyance dated 8<sup>th</sup> July 1986 made between her and Stephen's sole appointed executor. Dorothy also relied on the statutory declaration of Angela Edmund which outlined Stephen's acquisition and occupation of the disputed properties.

The appellants filed a defence and counterclaim seeking a declaration that they are the owners of the disputed properties and for other reliefs. They averred that Adella devised to themselves and their sister, Agnita, in equal shares, lands which included the disputed properties. The appellants relied on the Deeds of Assent dated 19<sup>th</sup> September 1986, that were executed in their and Agnita's favour, by which they claim entitlement to their respective parcels of land. The appellants contended that Stephen was given permission to occupy a portion of their mother's land, and that she did not mention him in her will.

Despite there being uncertainty about the description and location of the disputed properties, the summarised issues for consideration in the High Court were whether the respondent or the appellants have proper title to the disputed properties and whether the party found to be the owner of the properties is entitled to the remedies sought. The judge dismissed Dorothy's claim, having found that neither Stephen's will, the statutory declaration, nor the Deed of Conveyance were sufficient as a good root of title. The learned judge also rejected the appellants' counterclaim since the formalities required to pass legal title to the beneficiaries of Joseph Phillip's will had not been complied with, and therefore Adella had only a beneficial interest at the time of her death and could not pass legal title to her daughters.

Being dissatisfied with the decision of the learned judge, the appellants appealed to this Court on seven grounds of appeal. The issues that arose for consideration from the grounds of appeal are: (i) whether the learned judge erred in not treating the case as one based on adverse possession; (ii) whether the learned judge erred in not finding that the

respondent's claim was based on fraudulent documents and setting aside the documents; (iii) whether the learned judge erred in dismissing the appellants' claim to be declared as the owners of the disputed properties; and (iv) having dismissed the claim and counterclaim whether the judge erred by not fashioning a remedy for the matters in dispute between the parties as required by section 20 of the West Indies Associated States Supreme Court (Grenada) Act ('the Supreme Court Act').

**Held:** dismissing the appeal, setting aside the judgment and orders of the trial judge, remitting the case to the High Court to be tried before a different judge and ordering that each party shall bear their own costs of the appeal and in the court below, that:

1. In circumstances where both parties claimed the disputed properties by paper titles and yet relied, in varying degrees, on possession, the judge did not err in not deciding the case on adverse possession when that remedy was not pleaded or claimed.
2. Allegations of fraud must be fully, clearly and distinctly pleaded and particularised. The appellants' pleadings and witness statements were bereft of any particulars of fraud or evidence to substantiate this allegation. In the circumstances, the judge was correct to find that the appellants failed to substantiate the allegation of fraud. The appellants' claim that the statutory declaration and the respondent's Deed of Conveyance be struck out of the Deeds and Land Registry in Grenada as being fraudulent is therefore without merit and is refused.

**Donovan Crawford and Others v Financial Institutions Services Limited** [2005] UKPC 40 applied; **Thomas v Stoutt and others** (1997) 55 WIR 112 applied; **St. Lucia Motor & General Insurance Co. Ltd v Peterson Modeste** [2010] ECSCJ No. 8 applied.

3. A good root of title, must, among other things, show that the grantor has the full legal and equitable interest in the property conveyed. There is no evidence that the legal title to the disputed properties was conveyed to Adella from Joseph's estate and therefore she had only an equitable interest to convey and no legal title to pass to the appellants as her legatees. The judge therefore correctly found on the evidence that the Deeds of Assent conveying the disputed properties to the appellants did not constitute a good root of title and on that basis the appellants could not be declared owners of the disputed lands.

**Halsbury's Laws of England**, Vol. 23, para 114 considered.

4. The learned judge did not err in dismissing the respondent's claim for a documentary title.

5. The relativity of titles principle is not applicable to this case since the paper titles of both parties failed, there was no pleading or claim for a possessory title, and there was uncertainty about what constitutes the lands in dispute. However, the judge's conclusion in not declaring an owner of the disputed properties did not resolve the dispute between the parties. Accordingly, the judge's orders should be set aside.

**Dean and another v Arawak Homes Ltd** 2014 UKPC 24 distinguished; **Ocean Estates Limited v Norman Pinder** [1969] 2 AC 19 distinguished.

6. This Court can only act under section 20 of the Supreme Court Act to deal with the unjust result if there is a proper legal foundation with appropriate evidence. This is not an appropriate case for this Court to fashion a remedy under the **Trustee Act** or one based on possession. In the circumstances, this Court cannot make an order concerning title to the disputed properties and, regrettably, the case must be remitted to the High Court for a retrial.

Section 20 of the **West Indies Associated States Supreme Court (Grenada) Act**, Cap 336 of the Revised Laws of Grenada considered; Sections 22(f) and 28 of the **Trustee Act** Cap. 329 of the Laws of Grenada considered.

## JUDGMENT

- [1] **WEBSTER JA [AG.]**: This is an appeal against the decision of the learned trial judge dated 5<sup>th</sup> October 2018 by which she refused the respondent's claim for declaratory orders in relation to two parcels of land situated in Petit Martinique, measuring 4 acres 2 roods and 6 poles in total. The learned judge also refused the appellants' counterclaim for declaratory orders in relation to the same parcels of land and made no order as to costs.

- [2] Some of the parties referred to in this judgment have the same or similar surnames and I will at times, with the utmost respect, refer to them by their first names.

### Background

- [3] The genesis of this appeal dates back to 1866 when the late Joseph Phillip, the appellants' grandfather, purchased property at Beausejour Estate, Petit

Martinique, comprising approximately 61 acres ("the Estate"). Joseph married Sayfish Joseph and together they had eight children. Joseph died testate on 12<sup>th</sup> August 1910. He devised two acres out of the Estate to his wife Sayfish, and the remainder of the Estate to his children to 'share and share alike'. In 1916, the Estate was surveyed and divided into seven lots of approximately 6  $\frac{3}{4}$  acres each, and later purportedly transferred to Joseph's children. Adella De Coteau, one of Joseph and Sayfish's children, was allotted 6 acres 3 roods and 10 poles shown as Lot D on the sub-division plan of the Estate. Adella also purchased the share of the heirs of her brother, Noel Joseph, deceased, which is shown as Lot C on the Estate plan. The appellants' case is that the disputed properties form a part of the lands acquired by Adella.

- [4] Adella died testate on 28<sup>th</sup> April 1978, having appointed Agatha De Coteau as her executrix. She devised all the lands that she owned to her three daughters, Theresa Joseph, Agatha De Coteau and Agnita Kent.
- [5] The respondent, Dorothy Abraham, is the daughter of Stephen De Coteau. Stephen is one of the two sons of Adella. He died testate on 23<sup>rd</sup> February 1986, leaving his estate to his daughter Dorothy. In August 2009, Dorothy brought a claim in the High Court against Theresa and Agatha, two of the children of Adella and devisees under her will, seeking, among other reliefs, a declaration that she is the owner of almost five acres, being the disputed properties. Theresa died prior to the commencement of the trial and Sarah Tannis-Joseph, the executrix of her estate, was substituted as a defendant.
- [6] The appellants filed a defence and counterclaim seeking a declaration that they are the owners of the disputed properties and for other reliefs.

#### **The Respondent's case in the High Court**

- [7] The respondent contended in the High Court that her father, Stephen De Coteau, was the owner of the two parcels of land comprising the disputed properties. She

averred that her father was in occupation of the properties from in or about 1963 until his death in 1986 and was the owner of both parcels of land. She relied on the 1981 statutory declaration of Angela Edmund which outlined Stephen's occupation of the properties, describing them as Lot 1 and Lot 2. The actual claim was based on a Deed of Conveyance dated 8<sup>th</sup> July 1986 made between Lennie Patrice, Stephen's sole appointed executor, and Dorothy Abraham, vesting the respondent with legal title to Lots 1 and 2.

- [8] In the statutory declaration, Angela Edmund declared that Stephen was let into possession of Lot 1 by Adella in or about 1963, his name was entered in the Tax Roll and he built his house on the said property. However, during cross-examination, the respondent stated that Lot 1 was given to Stephen by his grandmother, Sayfish, and not by Adella. In so far as it relates to Lot 2, Angela declared that this parcel of land was purchased by Joseph De Coteau for his son Stephen. Ms. Edmund further stated that Stephen was let into possession of Lot 2 by his father in or around 1965 and his name was entered on the Tax Roll. Lot 1 and Lot 2 are described in the schedule to the July 1986 Deed of Conveyance as measuring 2 acres and 2 roods, and 2 acres more or less respectively.
- [9] At the trial, the respondent also relied on the evidence of her husband Daily Abraham and her two other witnesses Gregory Roberts and Joseph Jones, both of whom died before the commencement of trial. Their witness statements were admitted into evidence. The evidence adduced by all three witnesses was to the effect that Stephen had been in long, undisturbed possession of the disputed properties.
- [10] In short, the respondent's case was that she is the legal title owner, having had a valid Deed of Conveyance conveying both properties to her. Accordingly, she sought the following reliefs from the court: (i) a declaration that she is the owner of the properties; (ii) a declaration that the appellants are not entitled to survey, lease, sell or otherwise dispose, interfere with, or exercise acts of ownership on

the properties; (iii) an injunction restraining the appellants from trespassing on, exercising acts of ownership over or in any way interfering with the properties or any part thereof; (iv) an injunction restraining the appellants from surveying, continuing to survey or to further subdivide for sale or lease or dispose of in any manner whatsoever any portion of the properties; and (v) general damages and costs.

### **The Appellants' case in the High Court**

- [11] The appellants asserted that they are the owners of the disputed properties. In their defence and counterclaim, they traced the history of their ownership of the disputed properties to the 1866 deed by which their grandfather, the late Joseph Phillip, acquired the Estate. They averred that Adella devised to themselves and their sister, Agnita Kent, in equal shares, five acres (more or less) of land that she inherited from her father, and another five acres that she purchased from Maria Joseph. Adella did not mention Stephen in her will. The appellants' position is that Stephen was given permission to occupy a portion of their mother's land and this was the parcel that he fenced and on which he built his house.
- [12] The appellants also relied on the Deeds of Assent dated 19<sup>th</sup> September 1986 that were executed in their favour and their sister, Agnita Kent, by which they claim entitlement to their respective parcels of land. They also contend that: (i) Agatha De Coteau has been in occupation of her mother's house since 1978 when Adella died; and (ii) Agnita Kent and Theresa Joseph were in occupation of their respective parcels until their deaths.
- [13] The appellants counterclaimed for the following reliefs: (i) declaratory orders that they were each entitled to their respective properties and that the statutory declaration of Angela Edmund and the Deed of Conveyance executed in 1986 in favour of Dorothy are fraudulent and should be struck from the Deeds and Land Registry; (ii) an order for the names Stephen De Coteau and that of the respondent to be struck from the property tax roll in respect of the subject

property; (iii) an order that the respondent cease all acts of trespass or ownership in respect of the subject property; (iv) damages for trespass and an accounting for all rent collected by the respondent in respect of Theresa's lot; and (v) interest and costs.

### **The Judgment in the Court Below**

- [14] From the issues joined between the parties, the learned judge identified four issues for resolving the principal issue of who owned the disputed properties. The issues identified can be summarised as follows: whether the respondent or the appellants have proper title to the disputed properties and whether the party found to be the owner of the properties is entitled to the remedies sought.
- [15] The learned judge first addressed the issue of adverse possession which was posed in the pre-trial memoranda of both parties. There was evidence from both sides that they possessed the disputed properties, but neither side pleaded adverse possession nor claimed relief based on possession. The learned judge found that both parties misconstrued the claim as being based (at least in part) on adverse possession. Having noted that adverse possession was not pleaded or claimed, and that Stephen entered the properties believing they belonged to him, the learned judge stated categorically in paragraph 12 of her decision that 'I therefore make no findings on the issue of adverse possession'. This finding effectively disposed of the issue of adverse possession. The learned judge ultimately dismissed the respondent's claim, having also found that neither Stephen's will, the statutory declaration by Angela Edmund, nor the Deed of Conveyance provided a good root of title.
- [16] In relation to the appellants' pleading of fraud, the learned judge, relying on the principle that where an allegation of fraud is made particulars must be given, found that the appellants made only bare allegations and failed to substantiate the allegations with particulars or facts. She dismissed the allegation of fraud.



- [17] The learned judge also rejected the appellants' claim for ownership of the disputed properties based on their paper title. She noted at paragraph 47 that although Joseph Phillip's will was probated, the formalities required to pass legal title to the beneficiaries were not complied with and the distribution of his estate remains wholly or partially incomplete. Accordingly, at the time of Adella's death, she had only a beneficial interest and could not pass legal title to her daughters. The learned judge therefore dismissed the appellants' counterclaim for a declaration that they are entitled to the disputed properties.

### **The Appeal**

- [18] Being dissatisfied with the decision of the learned judge, the appellants appealed to this Court on 12<sup>th</sup> November 2018. The notice of appeal lists 7 grounds of appeal, namely:

1. The learned judge wrongly held that the appellants perceived the case to be one of adverse possession, thereby implying that it was not correct to so perceive it and to so treat with it;
2. The learned trial judge wrongly held that the appellants did not substantiate their allegation of fraud with particulars or any facts for the court's determination;
3. The learned trial judge failed to consider the totality of the evidence and the pleadings, and came to a decision or position that no reasonable judge or tribunal, considering the evidence and pleadings in the round, could have come to;
4. In delivering her judgment, the learned judge failed, as she was duty bound by section 20 of the **West Indies Associated States Supreme Court (Grenada) Act**, Cap 336 of the Revised Laws of Grenada ("the Supreme Court Act") to do, to deliver any remedy in respect of the matters in controversy before her so as to

prevent multiplicity of litigation in respect of the subject matter or claim;

5. The learned trial judge found, as a fact, that the respondent was not entitled to the subject land, as she claimed, but nevertheless, left intact and on the record the very same documents by which the respondent laid claim to the subject lands, thereby affording her the opportunity to continue using the documents adversely to the appellants' interest;
6. Even if the appellants' title were not perfected for the reasons stated by the learned judge (para 47 of the judgment), on the evidence, it was open to Her Ladyship, and indeed she was obliged by Section 20 the Supreme Court Act, to fashion a remedy to allow the appellants to perfect their title without the potential for re-litigation of the matter; and
7. The decision of the learned judge carries with it the potential of bringing the law into disrepute.

[19] The respondent did not counter appeal against the judge's decision not to declare her the owner of the disputed properties nor the decision not to make a finding on adverse possession.

### **The Disputed Properties**

[20] Before dealing with the issues that arise on the appeal it is important to determine the details of the location and size of the disputed properties and who occupies the properties. This task presented severe challenges for the learned trial judge because of the unsatisfactory and conflicting evidence from the parties and the documents and plans that were put in evidence. The learned trial judge commented on the confusing evidence of who occupied the disputed properties

and bemoaned the absence of a proper survey showing the claims of the parties.<sup>1</sup> The task of sorting out the confusion was just as difficult for this Court.

[21] The respondent described the property that she was claiming as Lots 1 and 2 in the schedule to the statutory declaration which was substantially reproduced in the schedule to the 8<sup>th</sup> July 1986 deed conveying the properties to her. The statutory declaration states that Stephen built his house on Lot 1 and the 1986 Deed annexes a plan showing the said Lot 1 as measuring 2 acres 2 roods and 0.6 of a pole. However, the 19<sup>th</sup> September 1986 Deed of Conveyance, conveying a part of Adella's estate to her daughter Theresa, contains a diagram of the land being conveyed measuring 2 acres 1 rood and 21 poles. This diagram appears to be conveying at least one of the two properties in the statutory declaration already purportedly conveyed to the respondent. The said Deed to Theresa reserves out of the property conveyed, a rectangular plot measuring 0.4 of an acre described as '[a]rea occupied by the late Stephen De Coteau 0.40 AC'. This looks like an acknowledgment by the appellants that Stephen occupied at least a part of Lot 1. The difference between the parties is that the respondent claims the entire parcel as the parcel described as Lot 1 in the statutory declaration and the appellants claim the said parcel less the 0.4 of an acre that was occupied by Stephen.

[22] There are other discrepancies in the description of the disputed properties as to location, size, and who is in occupation. The evidence of the appellants throughout is that the disputed properties are a part of the Estate that they inherited from Adella. The respondent's case is that the disputed properties include land given to her father by Sayfish and another property purchased by her grandfather Joseph De Coteau for Stephen's benefit. Both properties were gifted to her by her father, Stephen.

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<sup>1</sup> Record of Appeal, Bundle A, p. 230.

[23] There is even a submission by learned counsel for the respondent, Mr. Ruggles Ferguson, that the lot or lots claimed by his client are not a part of the Estate.

[24] The learned judge did not resolve these differences presumably because she decided the case on the paper titles. This Court cannot resolve the discrepancies and I am constrained to proceed on the basis that there is uncertainty about the description and location of the disputed properties. The result is that references in this judgment to “the disputed properties” are nothing more than a general description of the properties in dispute between the parties with no attempt to place any particular piece of land into the description.

### **Issues on Appeal**

- [25] The issues that arise for consideration from the grounds of appeal are:
- i. Whether the learned judge erred in not treating the case as one based on adverse possession;
  - ii. Whether the learned judge erred in not finding that the respondent’s claim was based on fraudulent documents and setting aside the documents;
  - iii. Whether the learned judge erred in dismissing the appellants’ claim to be declared as the owners of the disputed properties; and
  - iv. Having dismissed the claim and counterclaim whether the judge erred by not fashioning a remedy for the matters in dispute between the parties as required by section 20 of the Supreme Court Act.

### **Issue 1 - Whether the learned judge erred in not treating the case as one based on adverse possession**

[26] I mentioned in paragraph 15 above that the learned trial judge did not make a finding on adverse possession. In the case of the respondent, the learned trial judge found (correctly) that the respondent did not plead or make a claim for adverse possession and also that the evidence suggested that her father Stephen entered into possession of the disputed properties believing he had the right to do so. His possession was therefore as of right and not adverse. I note this observation by the judge which I neither adopt nor reject because of the unsatisfactory state of the evidence on possession of the disputed properties.

[27] Learned counsel, Mr. Alban John, who appeared for the appellants, was less assertive on the issue of adverse possession. He relied on the evidence of possession of the disputed properties by his clients only to the extent of supporting their claim to be the owners of the disputed properties and for disputing the respondent's belated claim for a possessory title. However, he submitted that the learned judge erred in finding that the appellants treated the case as one in adverse possession. I do not share his criticism of the judge's observation. As stated above, the case was pleaded and proceeded with by both sides as claims for documentary titles and there was no claim for possession. Mr. Ferguson did attempt in his submissions to add adverse possession as an alternative claim. However, the pleadings were not amended, and the judge did not deal with the alternative claim for adverse possession except to say that Stephen's possession was as of right and she was not making any findings on the issue of adverse possession.

[28] In circumstances where both parties claimed the disputed properties by paper titles and yet relied, in varying degrees, on possession, the judge should not be criticised for saying that the appellants wrongly perceived the case as one of adverse possession. In any case, whether the appellants mis-perceived the case is not the point. What is important is that the claims were based on paper titles and that is how the judge dealt with the case. The judge did not err in not deciding the case on adverse possession when that remedy was not pleaded or claimed.

- [29] This finding is sufficient to dispose of the first issue and ground of appeal number 1.

**Issue 2 - Whether the learned judge erred in concluding that fraud was not particularised for determination of the court (ground 2 and 5)**

- [30] The appellants alleged in the lower court that the respondent's 1986 Deed of Conveyance and the statutory declaration were fraudulent. This was a bare allegation unsupported by evidence.
- [31] Mr. John argued that the learned judge erred in holding that the appellants' allegations of fraud were not supported by particulars. He stated that this is particularly so in light of the judge's conclusion that there was no evidence of a gift of Lot 1 to Stephen and that the claim in respect of Lot 2 faced the same difficulty. He relied on the authorities of **East Caribbean Flour Mills Limited v Ormiston Ken Boyea & Hudson Williams**<sup>2</sup> and **St. Lucia Motor & General Insurance Co. Ltd v Peterson Modeste**<sup>3</sup> in support of his position.
- [32] This is a short point. It is trite that allegations of fraud must be pleaded and particularised. The facts relied on to ground this allegation must be fully, clearly and distinctly pleaded. The guidance from the Privy Council in **Donovan Crawford and Others v Financial Institutions Services Limited**<sup>4</sup> is instructive. Lord Walker, delivering the judgment on behalf of the Board, stated, '[i]t is well settled that actual fraud must be precisely alleged and strictly proved'.<sup>5</sup> The courts of the Eastern Caribbean have consistently made the same point.<sup>6</sup>

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<sup>2</sup> [2007] ECSCJ No. 110.

<sup>3</sup> [2010] ECSCJ No. 8.

<sup>4</sup> [2005] UKPC 40.

<sup>5</sup> Ibid at para 13.

<sup>6</sup> See for example *Thomas v Stoutt and others* (1997) 55 WIR 112 and *St. Lucia Motor & General Insurance Co. Ltd v Peterson Modeste* [2010] ECSCJ No. 8.

- [33] The appellants failed to particularise fraud in the pleadings. Instead, they traced the history of the properties and how they came to be in possession. After so doing, they made the broad and bare assertion that the Deed of Conveyance conveying property to the respondent and the statutory declaration of Angela Edmund are false and fraudulent and prayed that they be struck out of the records of the Deeds and Land Registry in Grenada. The pleadings and witness statements were bereft of any particulars of fraud or evidence to substantiate this allegation. In the circumstances, the judge was correct to find that the appellants failed to substantiate the allegation of fraud in their particulars or facts for the court's determination.
- [34] The claim in ground 5 of the notice of appeal that the statutory declaration and the respondent's Deed ought to have been struck out of the Deeds and Land Registry in Grenada is without merit and is refused.

**Issue 3 - Whether the learned judge erred in dismissing the appellants' claim to be declared the owner of the disputed properties (Ground 3)**

- [35] The learned judge did not grant the declaration of ownership sought by the appellants. Their appeal against this part of the judge's decision is contained in ground of appeal number 3 which is set out in paragraph 18 above. The appellants' complaint in this ground is that the judge failed to consider the evidence properly and came to a conclusion that no reasonable court could have come to. I take this to mean a conclusion that did not attribute ownership of the disputed properties to the appellants (or the respondent). In crude terms, the judge did not declare an owner of the disputed properties. I will return to this aspect of the judge's decision when I come to deal with the disposition of this appeal.
- [36] The history of the appellants' title to the disputed properties is set out in paragraphs 11 to 13 above. The trial judge found that there was a fatal flaw in the

appellants' root of title. The Estate was purchased by the appellants' grandfather Joseph Phillip who devised the Estate to his children. However, the executor of his will did not take steps to vest the properties comprising the Estate in his legatees. The trial judge found at paragraph 47 of the judgment that:

“Although his will was probated the formalities required to convey title to the beneficiaries were not adhered to or if they were, proof of that is not in evidence. In the premises Adella De Coteau remained a beneficiary with an equitable interest [in] the estate of Joseph Phillip. Her legal interest has not passed to her and it appears that the administration of the estate of Joseph Phillip remains wholly or partially incomplete. She was not seised in fee simple possession as stated in the Deeds of Assent.”

The judge proceeded to find that there was no ground to support the counterclaim and dismissed the appellants' claim for a declaration of ownership and the other remedies sought.

[37] The appellants seek to overturn this finding on appeal. The first hurdle that they have to overcome is to show that the Deeds of Assent conveying the disputed properties to them constituted a good root of title. A good root of title, must, among other things, show that the grantor has the full legal and equitable interest in the property conveyed.<sup>7</sup> The judge found on the evidence that the legal interest in the properties comprising Joseph Phillip's estate was not conveyed to his legatees and therefore Adella had only an equitable interest to convey to the appellants. I agree with this conclusion. There is no evidence that the legal title was conveyed to Adella and therefore she did not have legal title to pass to her legatees (the appellants).

[38] Mr. John did not seriously dispute that there was a flaw in the appellants' root of title. However, he maintained that the flaw did not disentitle the appellants to a declaration of ownership. The line of inheritance was clearly shown and none of the coparceners of the Estate claimed any part of Adella's estate. The general

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<sup>7</sup> Halsbury's Laws of England, Vol. 23, para 114.



principles relating to root of title and the judge's finding in paragraph 47 cited at paragraph 36 above effectively dispose of this submission.

[39] Mr. John's more cogent submission was that the learned judge did not give notice to the parties that she was going to raise the issue of the incomplete administration of Joseph Phillip's estate. It first appeared in the written judgment and the appellants were not given an opportunity to give evidence regarding the issue or to make submissions to the judge. Further, he argued that the judge, having raised the issue without notice and having found that that the appellants have a beneficial interest in the properties, she should have fashioned a remedy for the appellants using the court's powers under sections 22(f) and 28 of the **Trustee Act**,<sup>8</sup> and section 20 of the **Supreme Court Act** by making vesting orders to the appellants of their respective properties.

[40] There is merit in Mr. John's complaint that they were not given an opportunity to file evidence or make submissions on the point that the judge used to decide to dismiss their claim. I will address this point in the following paragraphs under Issue 4.

**Issue 4 - Whether the learned judge should have fashioned a remedy to prevent further litigation of the issues (grounds 4 and 6)**

[41] Mr. John's alternative position in his written and oral submissions was that the learned judge, having decided that Adella had an equitable interest in the disputed properties, should have gone on to declare that the appellants also owned the legal title to the disputed properties. She had the power to fashion such an order under section 20 of the **Supreme Court Act** and was required to do so rather than dispose of the case without declaring an owner of the disputed properties. Section 20 of the **Supreme Court Act** provides that:

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<sup>8</sup> Cap. 329 of the Laws of Grenada.

“The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the Court grant either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.”

- [42] Section 20 gives the court wide powers to deal with an unjust result in appropriate cases. The section can be used to fashion a remedy if there is a proper basis for doing so on the evidence. Mr. John suggested that the way to bridge this gap in the context of the partially administered estate of the late Joseph Phillip is by this Court making an order under sections 22(f) and 28 of the **Trustee Act** vesting the disputed properties in the appellants and also appointing the Registrar of the Supreme Court to convey Joseph Phillip’s interest in the absence of an executor or administrator. Sections 22(f) and 28 of the **Trustee Act** provide:

“22. In any of the following cases, namely –

...

- (f) where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of the land and is dead;

...

the Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

...

28. In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or release the contingent right; and a

conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.”

[43] Mr. Ferguson’s response to this submission is that, firstly, section 22(f) applies to cases where there is no heir or personal representative of a trustee who was entitled to or possessed of land and who died intestate in respect of that land, or where there is uncertainty as to who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land, and who is deceased. He argued that this provision is inapplicable to the facts of this case. Section 28 gives the court the power to appoint a person to convey the land where a vesting order can be made under the provisions of the **Trustee Act**. He stated that none of the circumstances in section 22 apply to this appeal.

[44] The arguments of both counsel are interesting but I do not think that this Court should make a vesting order. The issue of the vesting order was not raised in the court below and there is no evidence of why the administration of Joseph Phillip’s estate was not completed by his executors. Further, there is no evidence that there was a trustee who was entitled to or was in possession of the disputed properties and is now dead. Finally, this Court does not have the benefit of a ruling on the issue by the trial judge.

[45] Putting aside the issue of a vesting order, Section 20 of the **Supreme Court Act** should still be examined to see if it can be used to fashion a resolution of the issues in this case. The section imposes a duty on the judge to determine all matters in controversy between the parties to avoid a multiplicity of legal proceedings. Litigants spend their time and money to come to court to get a resolution of their disputes. This is particularly true in cases involving land where the disputing parties cannot be expected to coexist on the land.

[46] I will also examine the common law principle of relativity of titles<sup>9</sup> which allows the court in a dispute over competing titles to property to assess the strengths of the competing titles and award the disputed land to the holder of the better title.

[47] Mr. Ferguson relied on the case of **Ocean Estates Limited v Norman Pinder**,<sup>10</sup> a decision of the Privy Council on appeal from the Court of Appeal of the Bahamas, to support his position that the respondent had the better title to the disputed properties and the trial judge should have fashioned a remedy in her favour using the powers granted to the Court by section 20 of the Supreme Court Act and the relativity of titles principle. The **Ocean Estates** case concerned a dispute between the holder of a paper title and a person claiming to be in possession of the disputed land. The Board awarded the land to appellant who held the paper title which Their Lordships found to be a better title than the respondent's possessory title. In delivering the advice of the Board Lord Diplock opined at page 25:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.”

[48] The principle in the **Ocean Estates** case was followed in another decision of the Privy Council from the Bahamas in **Dean and another v Arawak Homes Ltd**<sup>11</sup> where the dispute was between the holders of paper titles. The Board applied the relativity of title principle and awarded the property to the holder that it found had the better title. Lord Hodge ended the Board's decision with the pithy remark 'Arawak wins the battle of documentary titles'.

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<sup>9</sup> The phrase “relativity of titles” was first used by Lord Hodge in *Dean and another v Arawak Homes Ltd* 2014 UKPC 24.

<sup>10</sup> [1969] 2 AC 19.

<sup>11</sup> 2014 UKPC 24.

[49] How then does section 20 of the **Supreme Court Act** and the relativity of titles principle apply in the instant appeal. The disputing parties took the dispute to court because they needed a resolution to the conflicts over the ownership and possession of the disputed properties, including the court's decision on what piece or pieces of land make up the disputed properties. The learned judge was faced with a difficult situation. The paper titles of both parties failed for reasons found by the judge; there was no pleading or claim for a possessory title; and there was uncertainty about what constitutes the lands in dispute. These points make the case sharply distinguishable from the two Privy Council decisions and the relativity of titles principle difficult to apply. The Privy Council cases dealt with competing viable titles, and the Board decided which of titles was the better and made awards accordingly. In this case both titles to the disputed properties have been found to be defective – neither party had a good root of title. The situation was compounded by the fact that there was no pleading or claim for a possessory title. Figuratively, the learned judge's hands were tied. She could not use her powers under section 20 to fashion a remedy based on defective titles, and she could not decide the case on possession because it was not pleaded or claimed. The learned judge therefore dismissed the claim and counter claim.

[50] The learned judge's conclusion, though understandable, did not resolve the disputes between the parties and there must be a resolution. The parties are now in the same position that they were in 2009 when the claim was filed. In the circumstances, I am constrained to order that the judge's orders should be set aside, not because of errors made by her in coming to her decision, but because a decision was not made as to who owns the disputed properties. This issue must be resolved.

[51] I have also considered the option of the Court of Appeal making an order concerning title to the disputed properties, but I would decline to do so. This Court can only act under section 20 if there is a proper legal foundation with the

appropriate evidence. The learned judge found that both paper titles were defective and this Court has not disturbed those findings. Further, there is little or no evidence to make a vesting order under the **Trustee Act**, and the evidence of possession is heavily contested and must be assessed and resolved by a trial in the lower court.

### **Disposition**

[52] I am aware that to order a retrial should be the last resort in circumstances where the remaining parties are of advanced age and the matter is of some antiquity. However, for the reasons that I have outlined above, I have concluded that a retrial is necessary. Allowing the judgment to stand would result in greater injustice to the parties since the issues in dispute are still unresolved. A retrial could resolve issues such as the identification of the disputed properties, possessory claims, and the appellants' claim for a vesting order. In the retrial the parties will be at liberty to apply to the trial judge for orders regarding the pleadings and the management of the case.

[53] Finally, it should be apparent from the difficulties outlined in this judgment that a retrial will further delay the resolution of the issues in this case. I encourage the parties to consider mediation with a view to resolving the disputed issues in a practical way.

### **Order**

[54] For the reasons outlined in this judgment I would make the following orders:

(1) The appeal is dismissed.

(2) The judgment and orders of the trial judge are set aside.

(3) The case is remitted to the High Court to be tried before a different judge.

(4) The parties shall bear their own costs of the appeal and in the court below.

I concur.

Louise Esther Blenman

**Justice of Appeal**

I concur.

Mario Michel

**Justice of Appeal**

**By the Court**

**Chief Registrar**