

THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2022/0018

BETWEEN:

ADOLPHUS JOHN SITNEY

Appellant

and

[1] BENEDICT NOEL
[2] MARTHA NOEL
[3] BERNADINE STEELE
[4] RACHEL STEELE
[5] DUNBAR CHRISTOPHER STEELE
[6] JAVIER STEELE

Respondents

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mr. Eddy D. Ventose
The Hon. Mr. Gerard St. C. Farara

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

Appearances:

Ms. Winnifred Duncan Phillip with Ms. Thira Dumont for the Appellant
Dr. Francis Alexis KC with Ms. Olabisi Clouden for the first and second Respondents
Mr. Anselm Clouden with Mr. Dwight Horsford for the fourth to sixth Respondents

2025: January 30;
2026: March 25

Civil appeal – Claim for possession of land – Adverse possession – Appellate interference – Findings of fact – Whether the learned trial judge erred in her findings of fact – Estoppel – Denial of title to land – Whether the learned trial judge was correct in law in holding that the respondents were not estopped from denying the appellant’s title – Tenancy at will – Whether the learned trial judge erred in not finding that the respondents were tenants at will – Limitation – Adverse possession – Whether the learned trial judge was correct in granting the respondents an order for possession of the respective lots they occupied on the property.

In a fixed date claim form and supporting affidavit filed on 24th October 2016 (“the Claim”), the appellant asserted that he is the owner of a parcel of land situated in Grenville in the parish of Saint Andrew (“the Property”) by virtue of a deed of gift dated 15th April 1997. The appellant contended that the respondents and their predecessors had constructed houses on the Property and had occupied those houses with the permission of his mother, Rita Sitney, and subsequently himself as tenants paying rent. He alleged that rent was collected from the parents of the respondents and that, after the Property was gifted to him in 1997, he continued to collect rent from them with periodic increases over the years and issued receipts thereof. The appellant further stated that he later sought to sell portions of the Property to representatives of the respondents but that those negotiations were unsuccessful after his title was challenged. He thereafter served notices to quit in May 2013 and, when the respondents failed to vacate the Property, the appellant instituted proceedings in the Magistrate’s Court in June 2015 seeking possession for nonpayment of rent. Those proceedings were dismissed on the basis that the respondents were not his tenants.

In their defence and counterclaim filed on 12th December 2016, the first and second respondents (“the Noels”) denied that the appellant was the lawful owner of the Property and disputed the validity of the deed of gift and statutory declaration upon which he relied. They asserted that Geraldine Noel constructed her house on the Property in or about 1955 and that there was never any rental agreement between Geraldine Noel and either Rita Sitney or the appellant. Although the Noels admitted that Geraldine Noel paid rent to the appellant between 2000 and 2003 after he represented that he had become the owner of the Property, they contended that those payments were made under a mistake of fact or law and that Geraldine Noel ceased paying rent after discovering that the appellant was not the true owner. The Noels therefore counterclaimed that they had been in long, open, continuous and undisturbed possession of the Property since at least April 2004 without acknowledging the appellant’s title and that, by reason of such possession, the appellant’s claim filed in 2016 was statute barred pursuant to section 4 of the **Limitation of Actions Act**, Cap. 173 of the Revised Laws of Grenada 2010 (the “**Limitation Act**”).

Similarly, in their defence and counterclaim filed on 31st March 2017, the third to sixth respondents (“the Steeles”) denied that the appellant was the owner of the Property and challenged the deed of gift and statutory declaration on which he relied. They contended that Alexander Steele and Catherine Steele constructed their house on the Property in or about 1966 and that they had no knowledge of any rental agreement between their parents and the appellant or his predecessor in title. They maintained that any rent previously paid by their parents to the appellant ceased in or about 2003 after suspicions arose as to the validity of the appellant’s title and that any such payments were made under a mistake of fact or law. The Steeles therefore counterclaimed that they had remained in long, open, continuous and undisturbed possession of the Property since April 2004 without recognising the appellant as owner and that, in consequence, the appellant’s claim commenced in 2016 was barred by section 4 of the **Limitation Act**.

By a written judgment delivered on 31st May 2022 following the trial on 21st March 2022, the learned trial judge dismissed the appellant’s fixed date claim and accepted the respondents’ defence and entered judgment on the counterclaim. The learned trial judge accepted that the appellant’s asserted title derived from a deed of gift supported by a statutory declaration and therefore amounted to possessory title but found that neither party had produced a valid paper title to the Property. Having examined the documentary

and oral evidence, the learned trial judge identified several inconsistencies in the appellant's evidence relating to the rent receipts and correspondence, including receipts issued in the name of a deceased individual and irregularities in the numbering and dating of the receipts. The learned trial judge concluded that the predecessors of the respondents had paid rent only until approximately 2003 in the case of the Steeles and April 2004 in the case of the Noels, after which the respondents and their predecessors remained in possession without acknowledging the appellant's title. The learned trial judge held that time for the purposes of the **Limitation Act** began to run from the cessation of rent payments and that, by the time the appellant commenced proceedings in October 2016, the statutory period had expired. The learned trial judge therefore determined that the respondents had established possession *nec vi, nec clam, nec precario* and granted declarations that they were entitled to possession of the respective portions of the Property on which their houses were situated, together with an injunction restraining the appellant from trespassing or encroaching on the Property, and ordered the appellant to pay prescribed costs to the respondents.

Being dissatisfied with the judgment of the learned trial judge, the appellant appealed on several grounds, the principal ground being that the decision was against the weight of the evidence. The appellant contended that the learned trial judge erred in her assessment of the evidence by giving undue weight to certain evidence, failing to consider other relevant evidence, making findings inconsistent with the evidence before the court, and failing to appreciate the significance of some of the evidence. In addition, the appellant argued that the learned trial judge erred in holding that the respondents were not estopped from denying his title, failed to recognise that the respondents were tenants at will, and wrongly concluded that the respondents were entitled under the **Limitation Act** to orders for possession of the respective portions of the Property that they occupied. Consequently, the issues arising for determination on the appeal are (i) whether the learned trial judge erred in her findings of fact; (ii) whether the learned trial judge was correct in law in holding that the respondents were not estopped from denying the appellant's title; (iii) whether the learned trial judge erred in not finding that the respondents were tenants at will; and (iv) whether the learned trial judge was correct in granting the respondents an order for possession of the respective lots they occupied on the Property.

Held: allowing the appeal; setting aside the orders made by the learned trial judge; remitting the matter to the High Court to be tried *de novo* before another judge; and making no order as to costs, that:

1. It will be very rare for an appellate court to overturn findings of fact by a trial judge. This does not mean that findings of fact by a trial judge are inviolable. Bearing in mind the need for caution, an appellate court will not interfere with findings of fact by a trial judge unless compelled to do so. The threshold is therefore a high one. An appeal court will not interfere with findings of fact of a trial judge unless it is satisfied that the judge at first instance has gone 'plainly wrong'. The same principles apply to primary findings of fact as they do to evaluations of those facts.

Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2015] 1 LRC 232 followed; **Henderson v Foxworth Investments Ltd and another** [2014] 1 WLR 2600 followed; **FAGE UK Ltd v Chobani**

UK Ltd [2014] EWCA Civ 5 followed; **Alexander v Noel** (SLUHCVP2024/0012, unreported dated 10 March 2015 distinguished; **Cook v Thomas** [2010] EWCA Civ 227 followed; **Biogen v Medeva** [1997] RPC 1 followed; **Maso Capital Investments Ltd and another v Trina Solar Ltd (Cayman Islands)** [2025] UKPC 48 followed.

2. The following are some non-exhaustive examples meriting appellate interference in findings of fact by a trial judge (that is, where an appellate court is satisfied that the trial judge was plainly wrong): (1) a material error of law; (2) when a trial judge failed to analyse properly the entirety of the evidence; (3) where a finding of fact is made on which there was no evidence to support; (4) if the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable; (5) a finding of fact was based on a misunderstanding of the evidence; (6) a finding of fact which no reasonable judge could have reached; (7) if it can be shown that the judge had failed to use or had palpably misused his advantage of having seen and heard the witnesses; and (8) a demonstrable failure to consider relevant evidence.

Henderson v Foxworth Investments Ltd and another [2014] 1 WLR 2600; **Choo Kok Beng v Choo Kok Hoe** [1984] 2 MLJ 165; **In re B (A Child)(Care Proceedings: Threshold Criteria)** [2013] 1 WLR 1911; **Hamilton v Allied Domecq Plc** [2006] SC 221; **Wheeldon Bros Waste Ltd v Millennium Insurance Co Ltd** [2019] 4 WLR 56; **SS Hontestroom (Owners) v SS Sagaporack (Owners)** [1927] AC 37; and **Watt (or Thomas) v Thomas** [1947] AC 484 applied.

3. The assessment that must be carried out by an appellate court in an appeal of findings of fact by a trial judge is not the same as when determining an appeal from a discretionary decision of a trial judge. The principles outlined in the seminal case of **Dufour v Helenair Corporation Ltd** do not apply to appeals concerning findings of fact. The correct approach must always be used depending on the nature of the appeal with which the Court is concerned. A trial judge has no discretion to find facts that have not been presented on the evidence adduced at trial. They must evaluate the disputed versions and find the facts to arrive at their decision. That is markedly different from the exercise by a trial judge of a judicial discretion which involves a judge choosing between different courses of action in arriving at their decision. Where an appeal is concerned with an exercise of discretion, the identification of an error is not enough; a party must go on to show that because of that error, or the degree of it, that the decision by a trial judge was one that any number of judges reviewing the same facts would not have arrived at.

Dufour v Helenair Corporation Ltd (1996) 52 WIR 188 distinguished; **Alexander v Noel** (SLUHCVP2024/0012, unreported dated 10 March 2025) not followed.

4. Where there is a conflict of evidence at trial, the trial judge must assess the demeanor of the witnesses against: (1) contemporary documents if they exist; (2) the parties' pleaded case; (3) the

inherent probability of the rival contentions of the parties. If this approach is not adopted, there is a real risk that the evidence will not be properly evaluated, and as a result, the trial judge would have failed to take proper advantage of having seen and heard the witnesses. The Court found that the findings of fact made by the learned trial judge were not properly explained having regarded to the oral and documentary evidence that was before her. Since there were many facts in dispute the learned trial judge was required to conduct a proper evaluation of all the evidence, including consideration of its strengths and weaknesses, as well as testing what a witness says, for example, about the contents of contemporaneous document, compared to the actual text of that document. Nowhere in her evidence did the learned trial judge record her perception of any of the seven witnesses who gave evidence at trial. There was no thorough, or any, examination of the evidence of those witnesses to then clearly outline what weaknesses or strengths, if any, she found in their evidence. Similarly, there was no evaluation of any contradictions or inconsistencies in the evidence of any of the witnesses. The issues that arose at trial in the court below were very fact sensitive and required a thorough assessment of the oral and documentary evidence of the parties. Although the learned trial judge made some findings of fact, she did not go on to explain how or why she had reached those conclusions. In her written judgment, the learned trial judge was required to deal with the contested points in some detail to demonstrate that the essential issues have been addressed, which parts of the evidence have been given what appropriate weight, and why.

Horace Reid v Dowling Charles and Percival Bain [1989] UKPC 24 followed.

5. The parties are expected to know from the written judgment that the trial judge has considered the oral and documentary evidence in respect of the principal issues to be decided in the case. They are expected to be confident that the trial judge has considered all the issues raised and why the trial judge has found in favour of one party and not the other. A judgment must demonstrate that the essential issues raised by the parties have been addressed by the court and how they have been resolved. A failure to do so is likely to undermine the fairness of the trial. The party who has raised the grounds of challenge will have no confidence that the court has considered them at all; and he will have no idea why, despite his grounds of challenge, the evidence has been accepted.

Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556 followed.

6. The learned trial judge's approach to the evidence was unsatisfactory in a significant respect, in that she did not refer to any of the oral evidence given by the parties at the trial. There was no identification (far less in any detail) of the questions that needed to be answered if she were to decide on the principal issues raised in the court below. The learned trial judge did not subject the oral evidence of the parties to any scrutiny particularly considering the conflicting versions given by the respective witnesses of the parties. She did not draw together the evidence from the various sources and analyse it in order to make her findings in relation to the individual issues raised at the

trial. That was indeed necessary because the oral and documentary evidence of the parties pointed in different directions. The learned trial judge was required to identify the relevant evidence, discuss its significance and explain why she had reached a particular conclusion. In doing so, she had to analyse the various possible implications of different strands of evidence, as well as the inherent probabilities.

Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556 applied.

7. The learned trial judge did not assess any of the evidence of the seven witnesses who gave evidence at trial. There was no assessment of: (1) what evidence from which witness she accepted in relation to what part of the history of the case or of the issues to be decided or (2) which witness was being accepted as wholly or partly reliable or rejected as wholly or partly unreliable, and if so why. Consequently, the learned trial judge fell into error by not carrying out that central task of a trial judge when faced at trial with disputed documentary and oral evidence. The learned trial judge did not take advantage of having heard and seen the witnesses at trial such that appellate interference was exceptionally warranted in this case. The usual caution in overturning a trial judge's findings of fact did not apply because the learned trial judge did not make factual findings based on her assessment of the credibility or reliability of the witnesses who gave oral evidence, or the weight to be attached to their evidence. There were clear indications in her written judgment that the learned trial judge did not consider all the evidence that the parties presented to her at the trial. Consequently, the findings of fact made by the learned trial judge could not stand because they are plainly wrong.
8. The **Limitation Act** can only be used as a shield and cannot be used as a sword in acquiring a declaration of ownership to property. Consequently, it was not open to the learned trial judge to grant the respondents, on their counterclaim, a declaration that they are entitled in law (based on the **Limitation Act**) to any part of the Property.

Arnold Celestine v Carlton Baptiste GDAHCVAP2008/0011 (delivered 11th January 2010, unreported) applied.

9. Since the required evaluation and assessment of the oral and documentary evidence was not undertaken at trial by the learned trial judge, the matter must be remitted to be tried *de novo* before another High Court Judge. This was not a case where the Court of Appeal was in as good a position as the trial judge to make its own findings of fact.

JUDGMENT

- [1] **VENTOSE JA:** This appeal is concerned primarily with findings of fact by the learned trial judge in her judgment dated 31st May 2022 in which she: (1) dismissed the appellant's claim, among other things,

for damages for trespass and injunctive relief; and (2) granted a declaration that the respondents were entitled in law to possession of certain property based on their satisfaction of the requirements of section 4 of the **Limitation of Actions Act** (the “**Limitation Act**”).¹

The Parties

- [2] Before considering in summary the pleaded case of the parties, it is first necessary to explain who the parties are and their relationship to each other. It is also necessary to consider the main persons relevant to the respective contentions of the parties.
- [3] The appellant, who lives in the United States of America, is Adolphus Sitney and his mother is Rita Sitney. Miranda Belle is a realtor and first cousin of the appellant. Miranda Belle managed the Property on behalf of the appellant.
- [4] The first respondent is Benedict Noel, and the second respondent is Martha Noel. They are siblings and their mother was Geraldine Noel. Together they are referred to as the “Noels”. Geraldine Noel died on 25th June 2010. Anastasia Noel is also the daughter of Geraldine Noel and lives in the United States of America. Anastasia Noel is therefore the sister of the first and second respondents.
- [5] The third respondent is Bernadine Steele. The fourth respondent is Rachel Steele. The fifth respondent is Dunbar Steele. The sixth respondent is Javier Steele. Together they are referred to as the “Steeles”. Bernadine Steele is the daughter of Alexander Steele and Catherine Steele. Rachel Steele is the granddaughter of Alexander Steele and Catherine Steele and the niece of Bernadine Steele. Dunbar Steele is the son of Alexander Steele and Catherine Steele, brother of Bernadine Steele and uncle to Rachel Steele. Lindy Alexander is the daughter of Alexander Steele and Catherine Steele and lives in the United States of America. She is therefore the sister of the third and fifth respondents. Javier Steele is the son of Bernadine Steele. Alexander Steele died on 30th September 2009, and it appears that Catherine Steele died sometime in 2012. It also appears that Bernadine Steele, the third respondent, died sometime before the trial.

The Parties’ Pledged Case

The Appellant

¹ Cap 173, Revised Laws of Grenada 2010.

- [6] The appellant in his affidavit in support of the fixed date claim filed on 24th October 2016 claimed to be the owner of a parcel of land in Grenville in the parish of Saint Andrew (the “**Property**”) by virtue of a deed of gift dated 15th April 1997. He stated that his mother, Rita Sitney, was in possession of the Property before it was gifted to him. The appellant alleged that since he was a child, Geraldine Noel and the Noels occupied a house that they built on the Property. He also stated that Alexander Steele and Catherine Steele also built a house on the Property. The Steeles resided at the house on the Property. The appellant claimed that his mother collected the rent from the parents of the Noels and the Steeles and that when he became the owner of the Property in 1997 he continued to collect rent from the parents of the respondents. The initial rent was \$50.00 in 1997. That was increased to \$75.00 in 2001, \$100.00 in 2005 and \$300.00 in 2008. Receipts were issued in the name of the parents of the respondents for these years. In 2007, the appellant had reason to write the parents of the Noels and the Steeles when he noticed that they had commenced a concrete addition to their houses on the Property. Alexander Steele died in 2009 and the appellant’s agent, Miranda Belle, collected rent from Alexander Steele’s wife, Catherine Steele, and the Steeles continued to reside in the house on the Property.
- [7] In 2010, the appellant decided to sell the Property and by way of letters dated 10th April 2010 and 8th October 2010, he offered to sell part of the Property to Catherine Steele and Geraldine Noel. Lindy Alexander was to purchase part of the Property on behalf of the Steeles, and Anastasia Noel was to purchase part of the Property on behalf of the Noels. The appellant continued that the sale agreements dated 27th October 2013 were addressed to Lindy Alexander and Anastasia Noel. During those negotiations, he did not collect rent from the respondents for the year 2013. However, his real estate agent, Miranda Belle, received a letter from the attorney at law for Anastasia Noel indicating that the sale would not be finalized because the appellant’s title to the Property was defective. The appellant issued notices to quit to the Steeles and the Noels on 27th May 2013 giving them one year to deliver possession of the Property.
- [8] Since the respondents did not vacate the Property as ordered, the appellant instituted proceedings in the Magistrate’s Court on 1st June 2015 for possession of the Property because of non-payment of rent. The proceedings were dismissed by the magistrate who ruled that the respondents were not the appellant’s tenants. The appellant stated that, in the defence filed in the Magistrate’s Court, the first to

third respondents admitted that they paid rent to him and that any rent that they paid was a mistake of law or fact.

The Noels

- [9] The Noels, in the defence and counterclaim filed on 12th December 2016, disputed that the appellant was the owner of the Property and questioned the deed of gift on which the appellant based his title to the Property and the Statutory Declaration dated 1st April 1997. They stated that Geraldine Noel built her wooden house on the Property in or about 1955. They also denied that there was any rental agreement between Geraldine Noel and Rita Sitney or the appellant, and that Geraldine Noel never paid rent to Rita Sitney. They admitted that Geraldine Noel paid rent to the appellant from 2000-2003 when he informed them that he became the owner of the Property. When the appellant increased the rent to \$100.00 for the year 2004-2005, Geraldine Noel resented that and discussed this with her neighbors. As a result of those discussions, Geraldine Noel discovered that the rent she paid to the appellant was based on a mistake of fact or law, the mistake being that the appellant was the owner of the Property. Since discovering this mistake in 2003, Geraldine Noel stopped paying rent to the appellant and that any receipt purporting to show that Geraldine Noel paid any rent to the appellant after April 2003 was false.
- [10] The Noels admitted that the appellant brought proceedings against them in the Magistrate's Court in 2015. They stated that although the letter dated 18th October 2010 offering Geraldine Noel first refusal to purchase part of the Property, Geraldine Noel was already deceased since she died on 25th June 2010. The Noels denied that any construction was being done on the house in 2007 and maintained that they had no knowledge of the 2007 letter. They also denied any knowledge of any offers to sell part of the Property to Geraldine Noel or that they had any tenancy agreement with the appellant. The Noels stated that the letter addressed to Anastasia Noel showed that there was no offer to sell any part of the Property to them. They stated that they were never interested in or had any discussions with the appellant about purchasing the Property. The Noels also stated that no rent was paid by Geraldine Noel to the appellant from 2004 onwards and that they had never paid any rent to the appellant.
- [11] The Noels also counterclaimed that: (1) they did not pay any rent to the appellant since April 2004, (2) they have been in long, open, continuous and undisturbed possession of the Property since that date,

(3) they have not recognized the appellant as owner of the Property, and (4) consequently, the appellant's fixed date claim brought in 2016 was barred by virtue of section 4 of the **Limitation Act**.

The Steeles

- [12] The Steeles in their defence dated 31st March 2017 denied that the appellant owned the Property and disputed the deed of gift on which the appellant based his title to the Property and the Statutory Declaration dated 1st April 1997. They stated that Catherine Steele and Alexander Steele built their wooden house on the Property in or about 1966. The Steeles stated they have no knowledge of their parents paying rent or of any rental agreement between the appellant and their parents. They stated that any rent paid by their parents to the appellant ended in 2003 when their parents became suspicious that the appellant was not the lawful owner of the Property. The Steeles admitted that in 2007 a concrete bathroom was added to their house but stated that it was completed without them receiving any letter from the appellant.
- [13] They denied any knowledge of the letter from the appellant addressed to Catherine Steele in 2010 and maintained that they were not approached by either the appellant or his agent, Miranda Belle, to purchase any part of the Property. The Steeles denied any interest in purchasing part of the Property and they denied paying rent to the appellant and stated that their parents stopped paying rent to the appellant in 2003. They stated that any rent paid to the appellant by their parents was paid under a mistake of fact or law.
- [14] The Steeles also counterclaimed that: (1) they did not pay any rent to the appellant since April 2004, (2) they have been in long, open, continuous and undisturbed possession of the Property since that date, (3) they have not recognized the appellant as owner of the Property, and (4) consequently, the appellant's fixed date claim brought in 2016 was barred by virtue of section 4 of the **Limitation Act**.

The Judgment of the Court Below

- [15] The trial took place on 21st March 2022, and the learned trial judge gave her decision on 31st May 2022. The learned trial judge outlined the appellant's claim and his evidence in support of his fixed date claim from paras [2] to [17] of the written judgment. The learned trial judge then outlined the first and second respondents' case from paras [18] to [26]. She then outlined the case for the third, fourth, fifth respondents in paras [27] to [34].

[16] The learned trial judge then considered the issue of whether the appellant's title to the Property was superior to that of the respondents. She accepted at para [36] that the appellant's title, being a deed of gift that was obtained through a statutory declaration, amounted to title by possession. The learned trial judge also accepted at para [37] that neither the appellant nor the respondents had presented any valid paper title to the Property.

[17] After briefly summarising the parties' respective cases at paras [38] and [39], the learned trial judge proceeded to analyse the appellant's evidence at paras [40] to [42] as follows:

"[40] The claimant relies on copies of receipts to prove the payment of rent by the predecessors of the defendants. One such receipt is signed by the claimant and appears to be issued to Alexander Steele on 16th April 2010. This is factually impossible as Alexander Steele died in 2009.

[41] Also questionable is the associated numbers on the receipts provided. Receipt number 95 in the name of Alexander Steele is dated for the rental period of 2008-2009, whereas receipt numbered 96, in said name of Alexander Steele, is dated for a period prior to the period contemplated in receipt 95, as 2007 to 2008. This is from copies of the same receipt book.

[42] Furthermore, there is no evidence before the court of the claimant's receipts for rent for the period 1997 to 2000; the receipts exhibited commence from the year 2000. Moreover, there is no receipt before the court with respect to the rent which the claimant asserts was paid on behalf of the Steeles relative to the year 2012."

[18] The learned trial judge then stated at para [43] that:

"[43] A further inconsistency is the claimant's offer of first refusal to Geraldine Noel by way of letter dated October 2010, when it is a fact that Geraldine passed away on 25th June 2010."

[19] The learned trial judge then concluded that:

"[44] Given the above, the court is more inclined to find for the defendants that their predecessors paid rent to the claimant, and were tenants thereof, up until April 2004 in the case of the Noels, and 2003 in the case of the Steeles.

...

[49] There is no evidence of any of the defendants acknowledging the claimant as owner of the property. This is since before the death of their predecessors, whom, only from 2000 to 2003 (for the Steeles) or 2000 to 2004 (for the Noels) acknowledged the claimant as owner of the property. The court does not agree with the claimant that since the predecessors of the defendants had, at some point in time, acknowledged the claimant as owner of the property, by extension the defendants are estopped from disputing the claimant's title. The Noels' and Steeles' possession in their own right would have commenced following the death of their predecessors, whose possession in their own right commenced at their refusal to pay rent to the claimant."

[20] In relation to the defence filed by the first, second and third respondents in the Magistrates' Court, the learned trial judge stated that:

"[45] As regards the defence of the first, second and third defendants filed in the Magistrate Court on 25th August 2015 which the claimant relies on as evidence that the defendants paid rent, the court is of the view that said defence is inconclusive as to when rent was paid so as to confirm the payment of rent by the defendants. As it stands, the claimant has not produced any document evidencing payment of rent in the name of the defendants."

[21] In respect of the evidence concerning the potential sale of the Property to the relatives of the respondents, the learned trial judge concluded that:

"[46] Furthermore, the claimant's evidence regarding any potential sale with Anastasia Noel and Lindy Alexander is of no moment as neither is a party against whom the claimant is bringing this action."

[22] The learned trial judge then reasoned as follows:

"[52] This possession in their own right, in the instance of the Steeles, is demonstrated through the construction of a concrete bathroom structure in 2007, which the Steeles aver was completed.

[53] The claimant argues that the defendants would only have dispossessed the claimant from his land from the end of the time provided by the Notice to Quit, as only then were they occupying the property with the intention to dispossess the claimant.

[54] The court does not agree. ...
...

[55] The court is thus of the view that time began running from the expiration of the period for which payment of rent was made.

[56] This being the case, the court is thus of the view that the claimant has not made out to have a superior title to possession than that of the defendants. It is trite law that he who alleges and seeks to establish their rights in law must prove his case, and on a balance of probabilities, and the claimant in this instance has failed so to do.”

[23] In answering the question of whether the appellant’s claim was barred by virtue of sections 4 and 27 of the **Limitation Act**, the learned trial judge reasoned as follows:

“[59] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrued. Time begins to run against an owner entitled in possession only when he/she has been dispossessed.

[60] From the date on which Geraldine Noel discontinued payment of rent which is April 2004 up until the filing of the claim in October 2016, the period as required by statute for the bringing of an action has elapsed.

[61] Similarly, from the date on which Alexander Steele discontinued payment of rent, which is in 2003, up until the filing of the claim in October 2016, the period as required by statute for the bringing of an action has elapsed. Consequently, the claimant’s claim against the defendants is statute barred.

[62] The court is of the view that the Noel’s and Steele’s, have established that they both had the factual occupation and requisite intention to possess (*Animus Possidendi*) to dispossess the claimant.”

[24] The learned trial judge then concluded at para [63] that the respondents had proven their defence and counterclaim and that they had been in possession *Nec vi, Nec clam, Nec precario*, that is, ‘not by force, nor stealth, nor the licence of the owner’. Consequently, the learned trial judge at para [64] granted a declaration to the effect that the respondents were in law entitled to possession of the respective portions of the Property on which their houses were built. She also granted an injunction against the appellant from trespassing or encroaching on the Property. The appellant was also ordered to pay prescribed costs to the respondents.

The Appeal to this Court

[25] The appellant filed a notice of appeal on 12th July 2022 with the following 14 grounds of appeal:

“

1. The judgment is against the weight of the evidence.
2. The Learned trial judge failed to adequately consider all the rent receipts, letters and other documentary evidence which tendered to prove that the

parents/grandparents of the Respondents were tenants of the Appellant as late as April, 2011.

3. The finding of facts in favour of the Respondents in regard to the period for which rent was last paid was against the weight of evidence tendered on behalf of the Appellant that rent was paid by the Respondents respective predecessors as late as April, 2010 for the period ending April, 2011.
4. The Learned trial judge placed undue weight on the receipt issued to Alexander Steele on 16th April, 2010 given that Alexander Steele had died in September, 2009. The Appellant at paragraph 28 and 29 of his witness statement explained that he collected the rent from Alexander Steele's wife Catherine Steele and gave her a receipt for the period April, 2010 to April, 2011.
5. The Learned trial judge attached undue weight to the receipts numbered 95 and 96 to Alexander Steele without giving due consideration to the previous and subsequent receipts.
6. The Learned Trial Judge improperly considered and placed undue weight on the fact that the Appellant produced no rent receipts from 1997 to 2000. This was insignificant since all Respondents admitted that rent was indeed paid to the Appellant albeit they claimed that it was for up to April, 2004.
7. The Learned Trial Judge placed undue weight on the fact that no receipt was produced for the year 2012. The Appellant did not allege that rent was paid for 2012. It was the evidence of Miranda Bell that she did not collect rent for April, 2011 to March, 2012 because of ongoing discussions with the siblings of the Respondents to purchase the property.
8. The Learned Trial Judge placed inordinate weight on the October, 2010 letter of first refusal addressed to Geraldine Noel who had died in June 2010. In fact the first refusal letter of 10th April, 2010 was addressed to Geraldine Noel while she was alive. The 18th October letter was a follow up letter containing the price. The Appellant explained at paragraph 32 of his witness statement that the October, 2010 letter was nonetheless addressed to her because the first and second Defendants who continued to live in her house were not her only children. Therefore, the letter was not addressed to them specifically.
9. The Learned Trial Judge failed to mention or consider the letters written to Geraldine Noel and Alexander Steele in 2007 regarding extension to their respective houses. These letters further support the Appellant's contention that they were both his tenants up to that time.
10. The Learned Trial Judge failed to properly consider the significance of the Defence of the Respondents in the magistrate claim filed in 2015, wherein the Defendants stated that in 2013 the Respondents found out that the Plaintiff (the Appellant) had no proper title and that since discovering such mistake have not paid any further rent to the Plaintiff. The Learned Judge failed to consider the said Defence together with the letter written by the lawyer for the First and Second Respondent's sister Anastasia Noel in December, 2013 advising the Appellant's agent that the Appellant did not have good title. These two pieces of evidence clearly point to the fact that there was no query or doubt regarding the Appellant's title until about the year 2013 and not 2003 as alleged by the Respondents.
11. The Learned Trial Judge erred in holding that the Respondents were not estopped from denying the Appellant's title. There was no evidence of a third party with title

paramount. In considering *Wisbech St. Mary Parish Council v Lilly* 1956 1 WLR page 121 the Learned judge failed to also consider *Industrial Properties et al v Associated Electrical Industries Ltd* 1977 2 ALL ER 293 which was also before the Court.

12. The Learned Trial Judge placed undue weight to the Steele's addition of a bathroom in 2007 without adequately considering the Appellant's letter of warning to them as well as the payment of rent by them for that year as well as the ensuing years up to April, 2011.
13. The Learned Trial Judge failed to appreciate that the Respondents were tenants at will as the Appellant did not collect rent from them while negotiations for the sale of the properties to their siblings were ongoing. This tenancy at will terminated with the Notice to Quit in 2013 and 2014 respectively or alternatively one year from the beginning of the tenancy at will. The respective tenancies at will would have commenced when Alexander Steele and Geraldine Noel respectively died.
14. The Respondents having grounded their Defence on adverse possession under the Limitation of Actions Act are not entitled under that Act to an order for possession of the respective lots they occupied."

[26] Most of the grounds of appeal relate to findings of fact by the learned trial judge. The main ground of appeal is, therefore, ground of appeal one, namely, the judgment or decision of the learned trial judge is against the weight of the evidence. Grounds of appeal 2-10 and 12 are merely examples of where the appellant alleges that the learned trial judge: (1) *gave undue weight to certain evidence*: grounds of appeal 4, 5, 6, 7, 8 and 12; (2) *failed to consider certain evidence*: grounds of appeal 2 and 9 ; (3) *made findings inconsistent with the evidence*: ground of appeal 3; and (4) *failed to consider the significance of some evidence*: ground of appeal 10. The other grounds of appeal are: (1) the learned trial judge erred in holding that the respondents were not estopped from denying the appellant's title; (2) the learned trial judge failed to appreciate that the respondents were tenants at will; and (3) the respondents were not entitled, under the **Limitation Act**, to an order for possession of the respective lots they occupied.

[27] The issues that arise for consideration in this appeal are as follows: (1) whether the learned trial judge erred in her findings of fact; (2) whether the learned trial judge was correct in law in holding that the respondents were not estopped from denying the appellant's title; (3) whether the learned trial judge erred in not finding that the respondents were tenants at will; and (4) whether the learned trial judge was correct in granting the respondents an order for possession of the respective lots they occupied on the Property.

The Role of an Appeal Court – Findings of Fact

[28] Since 11 of the grounds of appeal relate to findings of fact it is important to bear in mind the applicable principles that are engaged when an appellate court is called upon to overturn findings of fact by a trial judge. A trial judge is responsible for hearing and evaluating the evidence presented by both sides in a civil dispute. In doing so, trial judges are often called upon to make assessments of the credibility of witnesses and the weight to be attached to any evidence presented by the parties in an impartial manner. They determine the issues that need to be resolved and make their decisions based on the evidence presented at trial and the applicable law. Where the parties' evidence consists mainly of oral testimony the trial judge must assess their character, the honesty and candour of their evidence, and the quality of their recollection. It is through the rigors of cross-examination at trial that oral evidence is tested. It is principally for this reason that successful challenges to findings of fact by a trial judge are rare.

[29] In **Watt (or Thomas) v Thomas**,² the Court of Appeal of England and Wales at 487- 488 stated as follows:

"I do not find it necessary to review the many decisions of this House, for it seems to me that the principle embodied therein is a simple one, and may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question."

[30] It goes without saying that an appellate court cannot replicate the proceedings in the trial court. An appellate court does not have the advantage of seeing or hearing the witnesses. This is especially so when issues of credibility of a witness and reliability of documentary evidence are at issue. An appellate court would be justified in interfering with a finding of fact by a trial judge if it is satisfied that

² [1947] AC 484.

any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion. Where this occurs, and '[i]t can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion': Lord Green MR in **Yuill v Yuill**.³

[31] Lord Hodge in **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd**⁴ explained as follows:

"[12]. It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'. See, for example, Lord Macmillan in *Watt (or Thomas) v Thomas* [1947] 1 All ER 582 at 590 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45, 2004 SC (HL) 1 at [16]–[19]. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1991] IRLR 309 at 312 (Lord Donaldson of Lymington MR). Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165 at 168–169 (Lord Roskill)."

[32] Lord Hodge is making it plain that it is not sufficient for the appeal court merely to state that it is satisfied that the trial judge was 'plainly wrong', but rather whether it was permissible for the trial judge to make the findings of fact which she did in the face of the evidence as a whole. The appellate court is required to identify the mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his or her conclusions. The assessment that must be carried out by an appellate court in an appeal of findings of fact by a trial judge is not the same as when determining an appeal from a discretionary decision of a trial judge. The principles outlined in the seminal case of **Dufour v Helenair Corporation Ltd**⁵ do not apply to appeals concerning findings of fact. Just before outlining what has become a much-quoted passage, Sir Vincent Floissac CJ stated at p 190 that the Court was there concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. He continued at pp 190-191 that:

³ [1945] 1 All ER 183 at 188.

⁴ [2015] 1 LRC 232.

⁵ (1996) 52 WIR 188.

“Such an appeal [*against a judgment given by a trial judge in the exercise of a judicial discretion*] will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.”

- [33] I can immediately see the attraction in using this test as an overarching test in respect of all appeals from decisions of trial judges. Every effort must be made to avoid his temptation. The correct approach must always be used depending on the nature of the appeal with which the Court is concerned. While there are dicta in the cases which state that, even in cases where the appeal is in relation to findings of fact, that the appellate court must be satisfied that the trial judge must be shown to have been ‘plainly wrong’, the basis on which that determination will be made differs depending on the nature of the decision appealed. Lord Reed in **Henderson v Foxworth Investments Ltd and another**⁶ at para [62] opined that the adverb ‘plainly’ ‘does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge’. He continued ‘[it] does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion’ but that ‘[w]hat matters is whether the decision under appeal is one that no reasonable judge could have reached’. The following obiter statement of this Court in **Alexander v Noel**⁷ is not to be taken as an accurate statement of the current position and ought not to be followed:

“[22] Likewise, there is much learning in the case law as to the proper approach of an appellate court when dealing with appeals from findings of fact by a trial judge in the exercise of his/her discretion. In this respect, this restatement of the guiding principles by Flossiac CJ in the seminal case of *Dufour and Others v Helenair Corporation Ltd and Others* is locus classicus in this jurisdiction: [the Court then quoted from *Dufour* the statement found at para [31] above].”

- [34] The instances where a trial judge could be said to have been plainly wrong are outlined in para [36] below. These are non-exhaustive examples of fact-finding gone wrong. A trial judge has no discretion to find facts that have not been presented on the evidence adduced at trial. They must evaluate the disputed versions and find the facts and apply the relevant law to arrive at their decision. This is not an exercise of any discretion. This is markedly different from the exercise by a trial judge of a judicial

⁶ [2014] 1 WLR 2600.

⁷ SLUHCVP2024/0012 (delivered 10th March 2025, unreported).

discretion which involves a judge choosing between different courses of action in arriving at their decision. This is why the second part of the test in **Dufour** is couched in terms which state that, after the identification of the error or the degree of the error it must then be determined whether the 'the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong'. In other words, where an appeal is concerned with an exercise of discretion, the identification of an error is not enough; a party must go on to show that because of that error, or the degree of it, that the decision by a trial judge was one that any number of judges reviewing the same facts would not have arrived at. In respect of an appeal concerned with a finding of fact, one of the bases is that the finding of fact is one which no reasonable judge could have reached. This is merely one of the reasons why an appellate court will interfere; it is not, like in the case of appeals relating to the exercise of a discretion, the only basis on which appellate interference will be warranted.

[35] In **FAGE UK Ltd v Chobani UK Ltd**,⁸ the Court of Appeal of England and Wales stated that:

"114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include

- i. The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- ii. The trial is not a dress rehearsal. It is the first and last night of the show.
- iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
- iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
- v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

⁸ [2014] EWCA Civ 5, [2014] FSR 29.

115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135.”

[36] The following are some non-exhaustive examples meriting appellate interference in findings of fact by a trial judge (that is, where an appellate court is satisfied that the trial judge was ‘plainly wrong’):

1. A material error of law (**Henderson v Foxworth Investments Ltd and another**);⁹
2. When a trial judge failed to analyse properly the entirety of the evidence (**Choo Kok Beng v Choo Kok Hoe**);¹⁰
3. Where a finding of fact is made on which there was no evidence to support (**In re B (A Child)(Care Proceedings: Threshold Criteria)**);¹¹ or the making of a critical finding of fact which has no basis in the evidence (**Henderson v Foxworth Investments Ltd and another**) and that in such a finding was ‘critical to the decision of the case’ (**Hamilton v Allied Domecq Plc**)¹² or where there was no evidence at all to support the finding that was made (**Wheeldon Bros Waste Ltd v Millennium Insurance Co Ltd**);¹³
4. If the judge failed to give the evidence a balanced consideration only if the judge’s conclusion was rationally insupportable (**Henderson v Foxworth Investments Ltd and another**);¹⁴

⁹ [2014] 1 WLR 2600 at paragraph 67 (Lord Reed).

¹⁰ [1984] 2 MLJ 165, PC, at pages 168-169 (Lord Roskill).

¹¹ [2013] 1 WLR 1911 at paragraph 53 (Lord Neuberger).

¹² [2006] SC 221 at paragraph 85 (Lord Hamilton).

¹³ [2019] 4 WLR 56 at paragraph 10 (Coulton LJ).

¹⁴ [2014] 1 WLR 2600 at paragraph 57 (Lord Reed).

5. A finding of fact was based on a misunderstanding of the evidence (**In re B (A Child)(Care Proceedings: Threshold Criteria)**)¹⁵ or a demonstrable misunderstanding of relevant evidence (**Henderson v Foxworth Investments Ltd and another**)¹⁶ or the judge plainly misunderstood the evidence in order to arrive at the disputed finding (**Wheeldon Bros Waste Ltd v Millennium Insurance Co Ltd**);¹⁷
6. A finding of fact which no reasonable judge could have reached (**In re B (A Child)(Care Proceedings: Threshold Criteria)**)¹⁸ or a finding that the decision under appeal is one that no reasonable judge could have reached (**Henderson v Foxworth Investments Ltd and another**);¹⁹
7. If it can be shown that the judge had failed to use or had palpably misused his advantage of having seen and heard the witnesses (**SS Hontestroom (Owners) v SS Sagaporack (Owners)**)²⁰ or that he had not taken proper advantage of his having seen and heard the witnesses (**Watt (or Thomas) v Thomas**)²¹ or any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion (**Watt (or Thomas) v Thomas**);²² and
8. A demonstrable failure to consider relevant evidence (**Henderson v Foxworth Investments Ltd and another**).²³

[37] However, caution is needed in this evaluative exercise because the appellate court only has the printed evidence before it. Lord Hodge in **Beacon Insurance** continued that:

“[16] In *Piglowska v Piglowski* [1999] 3 All ER 632 at 643 Lord Hoffmann referred to the advantage that a judge at first instance had in seeing the parties and the other witnesses when deciding questions of credibility and findings of primary fact. He suggested that an

¹⁵ [2013] 1 WLR 1911 at paragraph 53 (Lord Neuberger).

¹⁶ [2014] 1 WLR 2600 at paragraph 67 (Lord Reed).

¹⁷ [2019] 4 WLR 56 at paragraph 10 (Lord Coulton).

¹⁸ [2013] 1 WLR 1911 at paragraph 53 (Lord Neuberger).

¹⁹ [2014] 1 WLR 2600 at paragraph 62 (Lord Reed).

²⁰ [1927] AC 37 at page 47 (Lord Sumner).

²¹ [1947] AC 484 at page 488 (Lord Thankerton).

²² [1947] AC 484 at page 488 (Lord Thankerton).

²³ [2014] 1 WLR 2600 at paragraph 62 (Lord Reed).

appellate court should also be slow to reverse a trial judge's evaluation of the facts and quoted from his earlier judgment in *Biogen Inc v Medeva plc* [1998] 1 LRC 21 at 39:

'The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'

[17] Where a judge draws inferences from his findings of primary fact which have been dependent on his assessment of the credibility or reliability of witnesses, who have given oral evidence, and of the weight to be attached to their evidence, an appellate court may have to be similarly cautious in its approach to his findings of such secondary facts and his evaluation of the evidence as a whole. In *Re B (a child)* [2013] 3 All ER 929 at [60] Lord Neuberger acknowledged that the advantages that a trial judge has over an appellate court in matters of evaluation will vary from case to case. The form, oral or written, of the evidence which formed the basis on which the trial judge made findings of primary fact and whether that evidence was disputed are important variables. As Lord Bridge of Harwich stated in *Whitehouse v Jordan* [1981] 1 All ER 267 at 286:

'[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses, where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court is in just as good a position as the trial judge to make the decision.'

See also Lord Fraser of Tullybelton ([1981] 1 All ER 267 at 281), *Saunders v Adderley* [1998] 4 LRC 485 at 49 (Sir John Balcombe) and *Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642, [2003] 1 All ER (Comm) 140 at [12]–[17] per Clarke LJ. Where the honesty of a witness is a central issue in the case, one is close to the former end of the spectrum, as the advantage which the trial judge has had in assessing the credibility and reliability of oral evidence is not available to the appellate court. Where a trial judge is able to make his findings of fact based entirely or almost entirely on undisputed documents, one will be close to the latter end of the spectrum."

[38] While it will be very rare indeed for an appellate court to overturn such findings of fact by a trial judge, it is certainly possible based on the considerations outlined above bearing in mind the need for caution. This however does not mean that findings of fact by a trial judge are inviolable. An appellate court will

not interfere with findings of fact by a trial judge unless compelled to do so. The threshold is therefore a high one. Lloyd LJ in **Cook v Thomas**²⁴ at para [48] stated that:

“In a case in which the judge has had the benefit of oral evidence from the witnesses, has made findings of fact which are rationally explained, has described in detail his assessment of the respective witnesses as regards their reliability, and where his findings of fact differentiate with care as to what evidence from which witness is accepted in relation to which part of the history, no one witness being accepted as wholly reliable or rejected as wholly unreliable, an appellant who seeks to show that the judge’s findings of fact, or some of them, are unsustainable **faces a seriously difficult task**. (Emphasis added).”

- [39] The same principles apply to primary findings of fact as they do to evaluations of those facts. In **Biogen v Medeva**,²⁵ Lord Hoffman stated at page 45 as follows:

“The need for appellate caution in reversing the judge’s evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said *‘la vérité est dans une nuance’*), of which time and language do not permit exact expression, but which may play an important part in the judge’s overall evaluation. It would in my view be wrong to treat Benmax as authorising or requiring an appellate court to undertake a de novo evaluation of the facts in all cases in which no question of the credibility of witnesses is involved. Where the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge’s evaluation.”

- [40] The Privy Council in **Maso Capital Investments Ltd and another v Trina Solar Ltd (Cayman Islands)**²⁶ summarized the applicable principles as follows:

“Principles applied by appellate courts to findings of fact and evaluative assessments

19. The parties were largely agreed as to the principles to be applied by an appellate court to findings of fact or evaluative assessments of a lower court, which are well established. In the absence of some identifiable error such as a material error of law, an appellate court will not interfere with such findings unless the judge’s decision is plainly wrong, in the sense that it was one which no reasonable judge could have reached, or (which is the

²⁴ [2010] EWCA Civ 227.

²⁵ [1997] RPC 1.

²⁶ [2025] UKPC 48.

same) lies outside the bounds within which reasonable disagreement is possible; if the decision does not come within that category it is irrelevant that the appellate court would have reached a different decision. See *Assicurazioni Generali SpA v Arab Insurance Group (Practice Note)* [2002] EWCA Civ 1642; [2003] 1 WLR 577, at para 16; *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, at para 114; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600, at paras 58-68; *Volcafe Ltd v Cia Sud Americana de Vapores SA* [2018] UKSC 61; [2019] AC 358, at para 41; *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176; [2019] BCC 96, at paras 40-41; *Perry v Raleys Solicitors* [2019] UKSC 5; [2020] AC 352, at paras 49-52; *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, at paras 24.

20. Four of the reasons for that restrictive approach are of relevance to the current appeal. First, where the trial court has heard evidence given orally by witnesses, tested by cross examination, it is in a much better position to evaluate that evidence than an appeal court which does not have that advantage; a transcript of the evidence does not capture the atmosphere of the courtroom or the subtleties of the way the evidence was given. That applies as much to expert witnesses as it does to witnesses of fact (save sometimes in the special case of experts on foreign law). Secondly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] UKHL 27; [1999] 1 WLR 1360, 1372: “[The judge’s] expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge’s overall evaluation.” Thirdly, the trial judge has sat through the entire case and their ultimate judgment reflects this total familiarity with the evidence. The insight gained by the trial judge who has lived with the case for days or weeks will be far deeper than that of the appellate court whose view of the case is much more limited: *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477, at para 4. In the memorable and oft quoted metaphor ascribed to this consideration by Lewison LJ in *FAGE v Chobani*, “[i]n making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.” Fourthly, especially in long and complicated cases, duplication of the trial judge’s role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case. Again to quote the memorable language of Lewison LJ in *FAGE v Chobani*: “[t]he trial is not a dress rehearsal. It is the first and last night of the show.”

- [41] Before I review the decision of the learned trial judge to determine whether the appellant’s complaints are justified in that her findings of fact were against the weight of the evidence given by the parties at trial, I will first examine the transcript of the proceedings in the court below to determine the nature of the evidence given by the parties at the trial since, as I have foreshadowed above, most of that evidence is not referred to in the written judgment of the learned trial judge.

The Evidence at Trial in the Court Below

[42] The principal issues for determination at the trial before the learned trial judge, therefore, were, first, whether the parents of the respondents were tenants of the appellant; second, whether rent was paid by the respondents and or their parents up to 2011 as the appellant alleges or up to 2004 as the respondents claim; and, third, whether the respondents satisfied the requirements of adverse possession by virtue of section 4 of the **Limitation Act**. These questions turned largely on the evidence of the appellant that the parents of the respondents paid rent up to 2011 and his documentary evidence, namely, the receipts for those rental payments up to that time and other oral and documentary evidence. Before this Court are the witness statements of the persons who gave evidence at trial and the transcripts of the evidence of those who were called for cross-examination. We do not have the advantage of the learned trial judge of seeing and hearing those who gave evidence in person, but it is apparent from reading the transcript of proceedings in the lower court that the learned trial judge was faced with a difficult task of evaluating the oral and documentary evidence to conclude on the principal issues that arose in the court below. As I mentioned briefly above and elaborate further below, the learned trial judge in her written judgment did not refer to any of the oral evidence given by each of the witnesses at trial. I will outline that evidence in detail only to show how material they were to a resolution of the principal issues that the learned trial judge had to resolve.

[43] In the court below, the appellant, in summary, claimed principally damages for trespass, an order that the respondents deliver up the Property, that the respondents demolish and remove any houses or structures on the Property and injunctive relief restraining the respondents from trespassing on the appellant's Property. The respondents, in summary, countered that they had satisfied the requirements for adverse possession and the appellant's claim was barred by virtue of section 4 of the **Limitation Act**.

The evidence of the appellant

[44] The appellant's evidence in his witness statement did not differ materially from his statement of case. He claimed to be the owner of the Property by virtue of a deed of gift dated 15th April 1997. The appellant claimed that the respondents were his tenants, and that over the years he increased the rent payable by the respondents, from the original amount of \$50.00 per year in or around 1997, to \$75.00 in 2001, \$100.00 in 2005 and \$300.00 in 2008. The rents were collected by the appellant's agent and receipts were issued. The appellant's agent, Miranda Belle, collected rent originally from Alexander

Steele and subsequently from his wife, Catherine Steele, when Alexander Steele died on 30th September 2009. The appellant stated that he collected rent personally from Catherine Steele in April 2010 when he visited Grenada.

[45] In 2007, when the appellant noticed that the respondents had added or commenced concrete structures to their wooden houses on the Property, he wrote to them demanding that construction cease. He stated that following discussions with Alexander Steele he agreed that he could build the concrete bathroom because of Alexander Steele's illness.

[46] The appellant decided to sell the Property in 2010. He offered part of the Property to Catherine Steele and Geraldine Noel via letters dated April and October 2010, respectively. He stated that even though Geraldine Noel died in June 2010, the letter was nonetheless addressed to her because he was aware that the Noels were not her only children. He stated that he renewed his offer to sell the Property to the respondents following the death of Catherine Steele and Geraldine Noel. Negotiations in respect of the Steeles were made with Lindy Alexander, Bernadine Steele's sister, and in respect of the Noels the negotiation was with Anastasia Noel, the older sister of Benedict Noel and Martha Noel. The appellant stated that draft sale agreements were drafted in the names of Lindy Alexander (on behalf of the Steeles) and Anastasia Noel (on behalf of the Noels). Letters in respect of those agreements dated 27th October 2013 were sent by Miranda Belle, the appellant's real estate agent, and addressed to: (1) Lindy Alexander in the care of Bernadine Alexander; and (2) Anastasia Noel in the care of Benedict Noel and Martha Noel. Lindy Alexander was to purchase the Property on behalf of the Steeles and Anastasia Noel was to purchase the Property on behalf of the Noels.

[47] In his stated case, the appellant stated that he did not accept rent from the respondents in 2013 because of the impending purchase of the Property. However, in his witness statement he stated that because of the interest of the respondents and their family had in purchasing the Property he did not insist on the payment of rent while negotiations were ongoing. In his stated case, the appellant stated that he provided the respondents with the deed of sale to facilitate the purchase. However, the respondents decided not to proceed with the purchase because they were advised by their attorney at law on 28th December 2013 that the appellant's title to the Property was defective. The appellant stated that this was surprising because prior to that time none of the respondents or their parents had ever questioned his ownership of the Property on which their houses were built.

- [48] The appellant continued that since 2013, the respondents have not paid any rent to the appellant's agent despite his agent's demand of rent from them. Notices to quit were served on the respondents in May 2013 and November 2014. Proceedings brought by the appellant against the Noels and Bernadine Steele in the Magistrate's Court on 1st June 2015 for recovery of possession of the Property, because of non-payment of rent, were dismissed by the magistrate who held that the respondents were not tenants of the appellant. The appellant stated that the Noels and Bernadine Steele, in their defence filed in the Magistrate's Court, admitted to the payment of rent by their parents but that any such rent was paid under a mistake of fact or law.
- [49] During cross-examination by Dr. Francis Alexis KC, counsel for the Noels, the appellant accepted that Geraldine Noel built a house on the Property with the permission of his mother and that the house was built in or around 1972. He explained that his mother accepted rent from Geraldine Noel but that he did not have any receipts for the period before 1997. The appellant also stated that his aunt collected rent for his mother but that he did not know if she had any receipts. The appellant stated that although he paid property tax on the Property, he did not have any such receipts. The appellant denied that Geraldine Noel told him that she stopped paying rent because the appellant did not own the Property. He insisted that he rented the Property to the parents of the respondents until the period when he was in negotiations to sell the Property to Anastasia Noel and Lindy Alexander.
- [50] The appellant denied that Geraldine Noel stopped paying rent in 2004 because he has receipts that show that she did. When asked whether the letter dated October 2010 addressed to Geraldine Noel was correct (because Geraldine Noel had died in June 2010), the appellant replied that he wrote it that way because she was the one who was paying rent even though she was deceased and that he still wrote it that way. When questioned why he was still putting the letter in the name of Geraldine Noel when she was deceased, the appellant replied that that was how he 'was writing the receipts and everything'. He insisted that because she was the 'rental person' the letter was written in her name. The appellant explained that Miranda Belle wrote the receipts and letters on his behalf. When it was put by counsel to the appellant that after 2004, Geraldine Noel did not pay any further rent to him, he replied that they did collect the rent and that he had the receipts. The appellant stated that Miranda Belle collected rent from Geraldine Noel in 2008.

[51] The appellant, in response to whether he spoke to Geraldine Noel in October 2010, replied that he did not. Counsel for the Noels put it to the appellant that Geraldine Noel never agreed to purchase part of the Property from him because she found out that the appellant did not own the Property. The appellant replied that Geraldine Noel was not alive when he was selling the Property and that he was selling part of the Property to her daughter, Anastasia Noel. The appellant explained that he issued notices to quit to the Noels because they were on the Property. When questioned by counsel about the receipt dated 16th April 2010 issued to Geraldine Noel and signed by the appellant that he was pretending that he personally collected rent from Geraldine Noel in 2010, the appellant replied that he collected rent from Catherine Steele for Geraldine Noel. He stated that the money was sent by Anastasia Noel to Catherine Steele to pay the rent for the Property on behalf of Geraldine Noel.

[52] On further cross-examination by Ms. Sandina Dates, counsel for the Steeles, the appellant stated that he never lived on the Property, but that his family planted short crops on the Property at one time. He stated that although he never collected rent from Bernadine Steele, he collected rent from Catherine Steele and Alexander Steele. The appellant, in response to whether he knew that the Steeles built their house on the Property in 1966, replied that it was approximately around that time, but he did not know when they built the house but all that he knew was that 'they got permission to build it by rent'. In response to why one of the receipts was in the name of Alexander Steele when he had died in 2009, the appellant responded that the money was received from Catherine Steele and that the receipt was in Alexander Steele's name because he was the one 'that was renting the property'. The appellant admitted that he never collected any rent from either the third or the fourth respondents.

The evidence of Miranda Belle

[53] Miranda Belle gave evidence for the appellant. Her witness statement expanded upon her affidavit filed in support of the fixed date claim form. She explained that she was related to the appellant and that Rita Sitney was her aunt. Miranda Belle stated that she managed and collected rents in respect of the Property on behalf of the appellant from the occupants of the two houses on the Property. Miranda Belle explained that she did not have receipts for the period 1997 to 2000 but that she had copies of receipts for the years commencing from 2000 to 2010. She stated that she collected rent from Geraldine Noel from 2000-2009 until her death and exhibited those receipts. Miranda Belle explained that the initial rent paid by Geraldine Noel was \$50.00 and this was subsequently increased and that Geraldine Noel paid the increased yearly rent without difficulty. Miranda Belle also explained that during

the same period she collected rent from Alexander Steele. She stated that Alexander Steele died in September 2009 and after his death his wife, Catherine Steele, paid the rent as she continued to reside in the house on the Property. She also stated that receipts were written in the name of both Alexander Steele and Catherine Steele, even though Alexander Steele had died.

[54] Miranda Belle gave evidence that in 2010, the appellant instructed her to sell part of the Property to the Noels and the Steeles. Consequently, she prepared two letters in April 2010, the first addressed to Geraldine Noel and the second to Catherine Steele for the sale of the land occupied by them on the Property. The appellant signed both letters, which gave the parents of the respondents the first option to purchase part of the Property. Miranda Belle stated that she personally delivered both letters to the parents of the respondents.

[55] Miranda Belle stated that, following discussions with Bernadine Steele, it emerged that Lindy Alexander was the person to purchase part of the Property on behalf of the Steeles. She explained that Catherine Steele and her family were making arrangements to purchase part of the Property. Miranda Belle stated that Lindy Alexander was the daughter of Catherine Steele who resided in the United States of America. She also stated that Catherine Steele asked her for, and she provided, a copy of the appellant's deed to Ms. Rosanne Douglas at the Bank of Nova Scotia in Grenville in Saint Andrew to facilitate a search of the title to the Property.

[56] Miranda Belle continued that it also emerged that Anastasia Noel, the daughter of Geraldine Noel who resided in the United States of America, was to purchase part of the Property on behalf of the Noels. Although Geraldine Noel died in June 2010, Miranda Belle stated that, on the instructions of the appellant, she continued to address correspondence to Geraldine Noel. In letters dated 18th October 2010, she wrote Catherine Steele and Geraldine Noel confirming the appellant's wish to sell the Property to them and the price at which he was willing to sell the Property.

[57] Miranda Belle stated that during the period of these negotiations to sell the property to the children of Geraldine Noel and Catherine Steele, the appellant informed her not to collect any rent for 2011-2012. She also stated that sale agreements dated 27th October 2013 in respect of both lots were prepared and addressed to Lindy Alexander (on behalf of the Steeles) and Anastasia Noel (on behalf of the Noels). Miranda Belle gave evidence that negotiations came to an end in 2013. She continued that the

letter for the Noels was addressed to Anastasia Noel because Benedict Noel and Martha Noel 'appear slow witted'. Miranda Belle explained that there was no sale of any part of the Property to the Noels and the Steeles because in 2013 they withdrew from all discussions to purchase the Property. She continued that she never collected any rent from the respondents following the death of their parents because they refused to pay any rent.

[58] During cross-examination by Dr. Francis Alexis KC, counsel for the Noels, Miranda Belle, when asked why she continued to address correspondence to Geraldine Noel when she had died in June 2010, she replied that during conversations with Geraldine Noel there was 'no way you could have addressed them [Benedict Noel and Martha Noel] with it. So, and it was going to be forwarded to the other sister in the [United States of America]'. When asked why she did not address the letter to either Benedict Noel or Martha Noel, Miranda Belle replied that 'as Ms. Noel told me once, they might not even understand why it has been on paper, so'. When asked about her observations about Benedict Noel and Martha Noel, Miranda Belle explained that Geraldine Noel had informed her that her children were 'slow with it'. She stated that the letter was delivered to Bernadine Steele who was supposed to forward it on behalf of Benedict Noel and Martha Noel and that Bernadine Steele was 'the one in the yard'. When questioned about the appellant's statement that the letter was delivered to Geraldine Noel, Miranda Belle replied that she delivered it to Bernadine Steele. She further explained that the letter was not delivered directly to Geraldine Steele but that the two letters were in a package, and this was to be forwarded to the two relatives of the Noels and the Steeles who were living in the United States of America.

[59] When questioned about her statement at para 8 of her witness statement that she collected rent and issued receipts to Geraldine Noel for the years 2000, 2001, 2002, 2003, 2004, 2005, 2007 and 2009, Miranda Belle replied that it should be Bernadine Steele. She explained that she issued some receipts directly to Geraldine Noel and sometimes she would have issued it through Catherine Steele. Miranda Belle explained that her practice was to telephone ahead to ensure the rent was there and when Geraldine Noel was not home, she (Geraldine Noel) would leave the rent with the Steeles for her to collect. In answering the question of whether in 2009 she collected money from Geraldine Noel directly, Miranda Belle replied that she could not remember if she collected money directly from Geraldine Noel directly or collected it from Catherine Steele on her behalf. When asked about the person from whom she collected the rent in 2000, Miranda Belle replied that she would always telephone before going to

the house to make sure the money was there on the premises and would collect it from whoever was there to give it to her. She would then issue the receipt in the name of the person who should be paying the rent.

[60] In answering the question of who was paying the money or whose pocket the money was coming from, Miranda Belle replied that the money was in an envelope and that she gave the receipt to whoever handed her the envelope containing the money. She stated that she remembered Geraldine Noel paying her rent directly in 2007 because at time she sat with Geraldine Noel and had a conversation with her. The witness not allowed to finish the question when counsel for the Noels immediately put it to her that Geraldine Noel did not pay her any money in 2007.

[61] On further cross-examination by Ms. Sandina Dates, counsel for the Steeles, Miranda Belle clarified that she did not collect rent from Dunbar Steele or Rachel Steele. In response to the question of whether she issued any receipts from 1997 to 2009 when she collected rents from Alexander Steele, she replied that she issued receipts but that the receipt book was misplaced.

The evidence of Cheryl Jessime

[62] Cheryl Jessime gave evidence for the appellant. She was one of the legal secretaries in 2012 who worked for the attorneys at law for the appellant. Cheryl Jessime stated that on 6th June 2012 Bernadine Steele came to the law office to speak to one of the attorneys at law. She continued that Bernadine Steele spoke to her in relation to the purchase by her family of the area of land they occupied on the Property. Cheryl Jessime explained that Bernadine Steele also stated that her family was interested in purchasing the Property and that Lindy Alexander was trying to raise the funds for the purchase and they would need some time for the transaction. Cheryl Jessime stated that she made a file note of the conversation to relay its contents to the attorney-at-law on their return.

[63] On cross-examination by counsel for the Noels, Cheryl Jessime was asked if she knew Lindy Alexander. She replied that she did not know Lindy Alexander. On cross-examination by counsel for the Steeles, Cheryl Jessime was asked if she made a note of the conversation with Bernadine Steele. She replied that she made a note, wrote the note and handed it to the attorney at law on their return to office. Counsel also asked her if the note mentioned Lindy Alexander and Cheryl Jessime replied in the

affirmative. Counsel also asked her if she did anything further in the matter and Cheryl Jessime replied that she had no further dealings with the matter.

The evidence of Benedict Noel

- [64] Benedict Noel gave evidence at trial which was similar to that found in the statement of case. He denied that the appellant was the owner of the Property, questioning the legality and validity of the 1997 deed of gift and the statutory declaration that preceded it. Benedict Noel stated that his mother, Geraldine Noel, built the wooden house on the Property in or about 1955. He denied that there was any rental agreement between his parents or grandparents and the appellant's family. Benedict Noel also stated that in or about 2000, the appellant informed his mother, Geraldine Noel, that he had become the owner of the Property and that she must pay rent to him. He continued that Geraldine Noel saw this as a threat and this forced her to pay him a yearly rent of \$50.00 in 2000, and a yearly rent of \$75.00 in 2001-2003. Benedict Noel stated that when Geraldine Noel paid rent in 2003 it was for April 2003 to March 2004.
- [65] Benedict Noel stated that when the appellant attempted to increase the rent for 2004/2005 to \$100.00 Geraldine Noel resented this and discussed it with the neighbors. He continued that from these discussions around mid-2003, Geraldine Noel discovered that her payment of rent to the appellant was based on the mistake that the appellant owned the Property. Benedict Noel stated that Geraldine Noel then stopped paying rent to the appellant and that whatever tenancy arrangement that existed between Geraldine Noel and the appellant was terminated by her with effect from April 2004. He continued that any receipt that showed that Geraldine Noel paid rent to the appellant after April 2003 was false.
- [66] Benedict Noel stated that Geraldine Noel was not alive when the letter from the appellant dated 18th October 2010 was written because she died on 25th June 2010. He continued that Geraldine Noel was not doing any construction to their home in 2007 so there was no construction for her to cease and that prior to these proceedings he had never seen the 2007 letter addressed to Geraldine Noel. He also stated that the appellant had never made any offer to him about any tenancy agreement. Benedict Noel stated that the appellant never made any offer to him to sell part of the Property and that he never informed the appellant that he was interested in the Property. Benedict Noel explained that he did not ask for or was provided with the appellant's deed and that he never had any discussion with the

appellant to purchase part of the Property. He also stated that he never obtained or solicited any advice from Dr. Francis Alexis KC about the appellant's title to the Property.

[67] Benedict Noel stated that he was never a tenant of the appellant and that no agent of the appellant ever demanded rent from him and that he did not pay rent to any agent of the appellant. He also stated that he received a notice to quit from the appellant and refused to quit the Property because he was not a tenant of the appellant. Benedict Noel continued that he refused to pay any rent to the appellant. He explained that since Geraldine Noel died on 25th June 2010, he and Martha Noel have been living in the house. Benedict Noel explained that since April 2004, he and Martha Noel, with Geraldine Noel until June 2010, have been living in long, open, continuous possession of the Property without paying any rent to the appellant or otherwise recognizing him as owner of the property and undisturbed by him.

[68] During cross-examination by Mrs. Danielle Williams Mitchell, counsel for the appellant, Benedict Noel stated that he worked carrying gas for fishermen and that he had been working all his life. When asked his age, he replied that he could not remember and then said he did not know his name. When asked by the court whether he knew his year of birth, he replied, no. Benedict Noel answered that he knew the appellant and his mother. When he was asked again if he knew Rita Sitney, Benedict Noel answered no. In response to the question of how he knew the appellant, Benedict Noel replied he did not know. He then later replied that he 'know him from up there'. He answered that the appellant did not live too far from him. When asked if the appellant used to come on the land when he was younger, Benedict Noel replied, no. When asked if Martha Noel was his sister, he replied no and that she was older than him. When asked what work Martha Noel did, he answered that Martha Noel worked but he did not know what work she did. When asked what work Geraldine Noel did before she died, Benedict Noel replied that '[s]he don't do nothing'.

[69] In response to the question that since he was at work that he could not know who was coming to the house to Geraldine Noel, Benedict Noel replied, no. In response to the question that he could not say for sure that Geraldine Noel never paid rent, he replied, no. When it was put to him that he could not say whether Geraldine Noel paid any rent at home because he was not always at home, Benedict Noel replied 'yeah'. He stated that his mother discussed things with him. He answered in the affirmative to

the question whether Anastasia Noel assisted with paying bills. Benedict Noel then replied 'no' to the question of whether he had a sister named Anastasia Noel or whether he knew her.

- [70] Benedict Noel replied in the affirmative that a defence was filed for him in the Magistrate's Court but that he could not recall what the defence said. In response to the question of whether the payment of rent stopped when the discovery was made of the appellant's title to the Property in 2013, Benedict Noel replied 'yes'. After initially saying he did not know the appellant, he then replied that he knew him. When para 1 of the defence in the Magistrate's Court was read to Benedict Noel, counsel put it to him that no discovery was made of the appellant's title until the Property was offered for sale, Benedict Noel replied 'yes'. Counsel then put to Benedict Noel that receipts were issued to Geraldine Noel from 1997 to 2010 by the appellant or his agent, and Benedict Noel replied 'yes'. It was put to Benedict Noel by counsel that the date of mid-2003 that he stated in his witness statement was false and he replied in the affirmative. When the question was asked again, he replied 'no'. Counsel put it to Benedict Noel that the date of March 2004 in his witness statement was included to fit into a 12-year limitation and he replied 'yeah'. When asked by the learned trial judge if he understood the question, Benedict Noel replied, no. The learned trial judge then observed that '[o]bviously, he doesn't have a clear appreciation of the questions'.

The evidence of Martha Noel

- [71] Martha Noel also gave evidence at the trial. Remarkably, her witness statement was identical in every material respect to that of Benedict Noel.
- [72] During cross-examination by Mrs. Danielle Williams Mitchell, counsel for the appellant, Martha Noel stated that she was 56 years old. Martha Noel stated that she knew the appellant but that she did not know for how long. Martha Noel was asked whether she knew Rita Sitney, the appellant's mother. She initially replied no twice, then said later: 'I know he mother' but then replied 'no' when the question was asked again. When the learned trial judge then asked Martha Noel if she knew Rita Sitney, she replied, "No, I don't know". When asked by counsel how she knew the appellant, Martha Noel replied, "I don't know. I don't know". She then subsequently stated she knew the appellant. She continued that he 'living in [Coquille] Road' and that he used to come by her on Coquille Road. Martha Noel stated that she did not work now and had never worked in her life. When asked by counsel whether she used to do any cleaning jobs, she replied, no. When asked what work Geraldine Noel did, Martha Noel replied she

used to work with nutmeg, in a nutmeg pool. Martha Noel was not aware when her mother stopped working in the nutmeg pool and stated that Geraldine Noel was at home with her. She confirmed that before Geraldine Noel died, she had stopped working in the nutmeg pool and that she was at home for some years.

- [73] When asked if she knew Alexander Steele, Martha Noel replied, yes and confirmed that Alexander Steele and Catherine Steele were both deceased. Martha Noel confirmed that Anastasia Noel was her sister and that she (Anastasia Noel) was in the United States of America. She remembered going to the Grenville Magistrate's Court and when asked if she knew why, she replied yes. Her response to whether she remembered was partly inaudible, but the transcript indicated the word 'land' in her response. Martha Noel confirmed that her lawyer in proceedings in the Magistrate's Court was Dr. Francis Alexis KC. She responded yes to the question of whether she knew Bernadine Steele and confirmed that Bernadine Steele was there in the Magistrate's Court with her. Martha Noel responded 'yes' when it was put to her by counsel that her mother paid rent from 1990-2010. She also replied that she did not know the lady who used to come to collect rent from her mother but that if she saw her 'I go know her' but that she did not know her by name but by face only.

The evidence of Anastasia Noel

- [74] Anastasia Noel gave evidence at trial on behalf of the Noels. Her evidence in chief was that she lived with her mother, Geraldine Noel, from about 1969 to 1993 when she migrated to the United States of America. She stated that in or around 2000, her mother told her that the appellant informed her that he was the new owner of the part of the Property where their house was located and that she had to pay rent to him for the spot. She continued that the appellant told Geraldine Noel that if she did not pay him, he would throw her off the spot and that, because of that threat made by him to her, Geraldine Noel began paying rent to the appellant. Anastasia Noel explained that Geraldine Noel began paying rent of \$50.00 a year in 2000; this was increased to \$75.00 in 2001 and increased again to \$100.00 in 2003. She continued that Geraldine Noel discussed this over the telephone with her in 2003 and that in mid-2003 Geraldine Noel found out from the neighbor that the appellant never owned the Property.
- [75] Anastasia Noel stated that when Geraldine Noel found that the appellant did not own the Property, she stopped paying rent to the appellant and never paid any rent to him in the period after March 2004. She

continued that the appellant came to her when she was in Grenada and asked for rent, but she told him that she was not going to pay any rent to him. She stated that the appellant told her that he was the owner of the Property, and she told him that she would buy part of the Property 'with proper papers'. Anastasia Noel stated that around December 2013 Bernadine Steele sent her a letter from the agent, Miranda Belle, informing her that the appellant wanted to sell the Property to her. She stated that the appellant had not shown her proper papers, so she had never 'bothered with [the appellant] or Miranda Belle'.

[76] During cross-examination by Mrs. Danielle Williams Mitchell, counsel for the appellant, Anastasia Noel stated that she had lived in the United States of America for almost 30 years. She stated that she was in her 30s when she left Grenada in 1993. Anastasia Noel stated that she did 'on and off' jobs before she left for the United States of America and that before she started those jobs she was at school. She also stated that she would visit Grenada every year before 2010 when her mother, Geraldine Noel, was alive to see her brothers and sister but during the COVID-19 pandemic, she could not visit Grenada for two years. She explained that she took care of her mother, Geraldine Noel, and her siblings, Benedict Noel and Martha Noel, and that she would visit Grenada at least once a year. Anastasia Noel stated that she would talk to Geraldine Noel at least once a week and that she also spoke to her siblings. She explained that Benedict Noel knows her as 'Vero', her home name, and that would explain why he stated the day before that he did not know 'Anastasia Noel' – and that not many people knew her by that name.

[77] She gave evidence that she sent money to her mother every month after she left Grenada in 1993. The money was to be used to pay the water and electricity bills and to purchase food for her mother and her siblings. Anastasia Noel stated that Benedict Noel and Martha Noel did not work – 'they can't do anything like' and that Benedict Noel did errands for people. She admitted that she knew the appellant because they all grew up together in Lasos in Village Road although they went to different schools. Anastasia Noel stated that the appellant lived not too far away from the house that Geraldine Noel lived in and that Village Road was walking distance from Coquille Road. She replied that she knew the appellant's mother, Rita Sitney. When asked if Geraldine Noel paid rent to the appellant, Anastasia Noel replied yes but that Geraldine Noel did not pay any rent to Rita Sitney.

[78] She admitted that her mother paid rent until 2004 when she (Anastasia Noel) stopped it when she got to know the truth. Anastasia Noel also admitted that she sent money to Geraldine Noel every month and that Geraldine Noel did not account to her how she spent the money. When pressed by counsel that she could not say for sure that her mother stopped paying rent because she was not there, Anastasia Noel replied that she knew Geraldine Noel stopped paying rent, continuing that Geraldine Noel paid until 2004 because she (Anastasia Noel) stopped paying it. She continued that Geraldine Noel always kept her informed. When asked by counsel how did she get to know this truth, she replied 'Like the neighbours telling us, there is in the boundary of the land, the wise people told us that [the Property] is not his and we don't know why you're doing that to these people'. When counsel put it to her that none of the neighbors gave her any information about the appellant at any time, Anastasia Noel replied, 'Yes, everybody here told me about the land and this and that. He is – they talked to me, they told me everything.'

[79] When counsel put it to her that the only challenge to the appellant's title to the Property arose when the appellant offered the land for sale and the title was checked, Anastasia Noel replied, 'that's not true'. When asked why she agreed to purchase the Property from the appellant in 2013 when she stopped paying rent to him in 2004 because he was not the owner of the Property, Anastasia Noel replied that 'we're going to buy it with proper papers'. When asked if she was acknowledging that her family was not the owner of the land, she replied: 'My family, no, my family is not'. When also asked if she was admitting that her family were never the owner of the land, she replied, 'No, it's not the owner of the land, I cannot say that. Because we went, to live there. I cannot say that, I'll be lying'.

The evidence of Rachel Steele

[80] Rachel Steele gave evidence at trial. Her evidence was that she was 37 years old and that since she was 7 years old she lived in the house that was built by her grandparents, Catherine Steele and Alexander Steele, on the Property. She lived there with them and with aunts, uncles and other cousins. Rachel Steele stated that she now lives with her aunt, Bernadine Steele, and her uncle, Dunbar Steele. She stated that recently she constructed a bathroom and toilet at the house in concrete. She stated that she always recognized the Property as belonging to Catherine Steele and Alexander Steele and that everyone contributed to the home and maintained it as the family house on the Property. Rachel Steele explained that during the years that she has lived at the house, she had never acknowledged anyone to be the owner of the Property. She continued that her grandparents, Catherine Steele and

Alexander Steele, along with her aunt, Bernadine Steele, and her uncle, Dunbar Steele, have always been in continuous possession and occupation of the land without acknowledging ownership of any other person. Rachel Steele stated that she had never paid any rent for possession of the Property to anyone.

[81] During cross-examination by Mrs. Danielle Williams Mitchell, counsel for the appellant, Rachel Steele stated she did not know the appellant personally but that she had seen him around. She stated that she was currently employed as a supervisor in a bakery and has been employed since she left school. Rachel Steele accepted that she was working outside the home and went to school outside the home. She replied in the affirmative that it was possible that Catherine Steele was paying rent to someone. Rachel Steele stated that she never saw her grandmother, Catherine Steele, pay any rent. She agreed that she was one of the younger residents in the home. She accepted that prior to her death Catherine Steele was at home retired. Rachel Steele stated that she knew Geraldine Noel and that she generally knew the Noels and that the Noels and the Steeles were close neighbors and good friends. She stated that Dunbar Steele was one of her older uncles but that growing up in the house, he was among the younger ones. Rachel Steele continued that Bernadine Steele was older than Dunbar Steele and that she did not know if Lindy Alexander was older or younger than Dunbar Steele.

[82] When asked whether Bernadine Steele took charge of the affairs or took charge of the family after Catherine Steele died, Rachel Steele replied in the affirmative stating that Bernadine Steele was the eldest sister in the house 'so everybody has her like she was the next mom, because she took charge, she was the eldest'. Rachel Steele stated that she was not aware of the Magistrates' Court proceedings but admitted that she was served with the 'court papers' in the proceedings in the High Court. She was adamant that she was not aware that in the defence filed in the Magistrate's Court proceedings Bernadine Steele admitted that she paid rent to the appellant. Rachel Steele also denied knowing that Bernadine Steele was trying to buy the land on which the house was situated on the Property. She stated that she did not know of the appellant coming on the Property or collecting any rent, and that she had not seen any rent receipts received by Catherine Steele from the appellant.

The evidence of Dunbar Christopher Steele

[83] Dunbar Steele also gave evidence at trial. He stated that he was 54 years and lived at the house on the Property and that he has lived there with his mother, Catherine Steele, and father, Alexander Steele,

and his siblings. Dunbar Steele continued that Catherine Steele's last three children were born on the Property, the first being born in 1967, namely, his sister Maureen. He stated that his father, Alexander Steele, died in 2009 and his mother, Catherine Steele, died in 2012 and that he had lived continuous in the family house until present. Dunbar Steele continued that at no time did he ever pay rent or acknowledged anyone to be the owner of the Property and that Catherine Steele and Alexander Steele, and his siblings, have always been in continuous possession and occupation of the Property without acknowledging ownership of any other person.

[84] During cross-examination by Mrs. Danielle Williams Mitchell, counsel for the appellant, Dunbar Steele stated that he was now 58 years and he had been living on the land where the house was situated since he was 2 years old. He admitted that he knew the appellant and his mother, Rita Sitney. Dunbar Steele accepted that the appellant lived 200 meters and walking distance from the Property and that he would 'bongs one another, we chat' when the appellant visited Grenada. He continued that the appellant was just four or five years older than him. Dunbar Steele stated that he did not recall the appellant's mother ever coming on the Property. However, he stated that he saw the appellant walk on Coquille Road. He continued that he did bus conducting work and construction work and that work occurred away from home. When asked by counsel how he would know if Catherine Steele was paying rent because he was not home all the time, Dunbar Steele replied that since he had a good relationship with his mother, she would inform him and that she never informed him about paying rent. He continued that even if she did not give him any receipt, she would let him know if she was paying any rent and that she would not hide that from him.

[85] When it was put to him that his sister, Bernadine Steele, filed a defence in the Magistrate's Court where it was stated that rent was paid to the appellant, Dunbar Steele replied that if Bernadine Steele did that, he did not know that. He also stated that he did not know that his family were paying rent to the appellant. Dunbar Steele also stated that he was not aware that Bernadine Steele was trying to buy the land on which the house was situated on the Property. When it was put to him by counsel that it was only during the negotiations to purchase the land that the Steeles found out that the land did not belong to the appellant, he replied that he did not know anything about that and that no one ever told him about selling or renting or anything like that. He stated that Bernadine Steele was older than him.

The evidence of Bernadine Steele

- [86] Bernadine Steele did not give evidence on behalf of the Steeles at trial because it appeared that she had passed away before the date of the trial.

The evidence of Javier Steele

- [87] Javier Steele, although he attended the trial, did not give evidence on behalf of the Steeles. At the trial, it was indicated that the appellant was not pursuing the claim against him. In any event, since 2005 he had not lived in the house on the Property that was now occupied by the fourth and fifth respondents.

The defence in the Magistrate's Court

- [88] At the trial, the learned trial judge invited the parties to address her on the proceedings in the Magistrate's Court. As mentioned earlier, the appellant brought proceedings in the magistrate's court seeking possession of the Property from the first, second and third respondents. In their defence, filed on 25th August 2015, those respondents stated as follows:

"1. The Defendants in 2013 found out that the Plaintiff had no title to the land the subject of this suit when the Plaintiff by his agent Re/Max wrote letters to the Defendants, or persons concerned with the Defendants, showing that the Plaintiff claims the land by virtue of long possession under a Statutory Declaration. A copy of each of those letters is attached as Annexures "A" and "B".

2. The Defendants claim the land by virtue of long possession

3. Any rent paid by or on behalf of the Defendants to the Plaintiff or his agent was paid under a mistake of Law. Paragraphs 1 and 2 above a repeated. Since discovering such mistake, the Defendants have not paid any further rent to the Plaintiff or any agent of his."

- [89] In oral submissions made at trial, counsel for the appellant submitted that, in the defence filed, the first to third respondents admitted to paying rent to the appellant and not paying further rent after discovering that the appellant allegedly did not have proper title to the Property. She continued that the defence of the first to third respondents in the Magistrate's Court purported to claim, 'long possession'. Counsel also submitted that the magistrate did not rule on the jurisdictional issue raised by counsel for the respondents, namely, that pursuant to section 31 of the **Magistrate's Act**²⁷ a magistrate did not have jurisdiction to try matters when a question of title to land arises or where the value of the land

²⁷ Cap. 177, Revised Laws of Grenada 2010.

does not exceed \$7,500.00. She clarified that the magistrate dismissed the claim for possession and arrears of rent because she ruled that the first to third respondents were not tenants of the appellant.

- [90] Counsel for the Noels submitted that in the Magistrate's Court the first and second respondents were claiming the land by virtue of 'long possession'.

Analysis and Conclusions

General observations

- [91] At the trial, the learned trial judge had to assess the oral and documentary evidence of the parties to determine whether they had proven their case on the balance of probabilities. At the conclusion of a trial, the judge, as a finder of fact, must consider all the material evidence deployed by the parties although she does not need to discuss all of them in her written or oral judgment. I accept unreservedly the proposition that 'a judge does not have to deal expressly with each and every point in issue in his judgment, but where an issue is fundamental to the case, it deserves mention and an explanation for the judge's decision' (**Jahwnie Gage et al v The Attorney General of the Commonwealth of Dominica**).²⁸ I would go further and add that where an issue or evidence is material or critical to the resolution of any dispute between the parties, the trial judge must address it fully, providing reasons for arriving at his or her conclusions. At the outset, I wish to state that I have approached the judgment of the learned trial judge with the principle of charity. This was recently explained by the Privy Council in **Alexander v Gabriel**²⁹ at para 22 as follows:

"22. ... In reviewing a judgment given at first instance, an appeal court should adopt what might be called a principle of charity: that is, the appeal court should approach the judgment on the assumption that the judge carried out her task proficiently and understood the facts and the law correctly, unless and until the contrary is shown. It would be unrealistic, would place an unreasonable burden on judges and would hinder the efficient administration of justice to expect judges to record everything relevant to their decisions in the reasons they give for them, including matters which are not salient or not disputed. Thus, it cannot reasonably be inferred that, just because a matter is not mentioned in a judgment, the judge ignored it. An appeal court should assume that a trial judge took into account all the evidence presented at the trial, unless there are clear indications to the contrary: see eg *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, para 2 (iii); *Gift v Rowley* [2025] UKPC 37, para 3; *Evans v Barclays Bank Plc* [2025] UKSC 48, para 135.
..."

²⁸ DOMHCVAP2020/0005 (delivered 15th April 2024, unreported).

²⁹ [2026] UKPC 7.

[92] In reviewing the judgment of the learned trial judge, I have assumed that the trial judge correctly and proficiently carried out her task of assessing and evaluating all the evidence that was adduced before her at trial and had understood the facts and law correctly. However, as will be shown more fully later in this judgment, there are clear indications that the learned trial judge did not consider all the evidence presented at the trial. In her written judgment, the learned trial judge does not mention or examine any of the oral evidence given by each of the witnesses of the parties at trial. This was unfortunate because, as mentioned above, the trial is where the written and oral evidence of the parties are tested to enable the trial judge to determine on the balance of probabilities which version of events that he or she believes and to explain how and why he or she had reached any conclusions on the evidence: **Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago**.³⁰ In **IN THE MATTER of an Appeal by Collins Richardson et al v Benjamin W Richardson et al**,³¹ the Court of Appeal had to consider whether the trial judge erred in finding as a fact that the appellant had not acquired ownership of property by prescription. The Court of Appeal was careful to point out that the trial judge in that case had carried out a careful assessment of the evidence before her, stating as follows:

“[9] The learned judge outlined the applicable legal principles and was careful to refer to the evidence that was led and to record her perception and assessment of the witnesses and by extension the evidence. She visited the locus in quo in order to appreciate the state of the property as it physically existed as some of the appellants/counter respondents had claimed that acts of possession in terms of cultivation and occupation continued up to the time of hearing before the judge. In arriving at her conclusions, the learned judge thoroughly examined the evidence of several witnesses as well as the transcripts of the 1975 cadastral hearing and the proceedings before the registrar. She individually examined each appellants/counter respondents’ claim and then clearly outlined in the judgment what she found to be weaknesses in their evidence. The learned judge highlighted the various contradictions and inconsistencies in the evidence of cultivation and possession which emerged following cross-examination and explained why she accepted the evidence of the respondents/counter appellants over the evidence of the appellants/counter respondents. Indeed, the judge carefully dealt with the competing interests of the parties in a matter which was very fact-sensitive.”

[93] The Court of Appeal, in dismissing the appeal against the findings of fact by that trial judge, stated at para [45] that the trial judge applied the relevant principles in coming to her conclusion and made

³⁰ [2026] UKPC 2 at paragraph 14.

³¹ AXAHCVP2016/0002 (delivered 24th May 2019, unreported).

findings of fact that were open to her on the evidence. The Court of Appeal observed that throughout her judgment the trial judge pinpointed that the evidence of some of the appellants/counter respondents' witnesses was either uncertain, imprecise or contradicted the evidence of other appellants/counter respondents and documentary evidence. Findings of fact like these made by a trial judge after that type of rigorous assessment makes it difficult for an appellate court to intervene.

- [94] This issue also speaks to the fairness of the proceedings in the court below. Lord Dyson MR in **Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz**³² stated at para [39] that:

“39. Our system of civil justice has developed a tradition of delivering judgments that describe the evidence and explain the findings in much greater detail than is to be found in the judgments of most civil law jurisdictions. This requires that a judgment demonstrates that the essential issues that have been raised by the parties have been addressed by the court and how they have been resolved. In a case (such as this) which largely turns on oral evidence and where the credibility of the evidence of a main witness is challenged on a number of grounds, it is necessary for the court to address at least the principal grounds. A failure to do so is likely to undermine the fairness of the trial. The party who has raised the grounds of challenge can have no confidence that the court has considered them at all; and he will have no idea why, despite his grounds of challenge, the evidence has been accepted. That is unfair and is not an acceptable way of deciding cases.”

- [95] The parties are expected to know from the written judgment that the trial judge has considered the oral and documentary evidence in respect of the principal issues to be decided in the case. They are expected to be confident that the trial judge has considered all the issues raised and why the trial judge has found in favour of one party and not the other. As was noted in **Harb**, a failure to do this is likely to undermine the fairness of the trial and that this was an unfair and an unacceptable way of deciding cases. The Court of Appeal of England and Wales in **Harb** therefore had no hesitation in concluding at para [44] that the trial judge had failed to examine the evidence and the arguments with the care that the parties were entitled to expect and which a proper resolution of the issues demanded. Consequently, it held that regrettably, in its view, the deficiencies in the judgment of the trial judge were so serious that that judgment could not be allowed to stand and that the matter had to be remitted to the High Court for re-trial.

³² [2016] EWCA Civ 556.

[96] The need for that type of assessment of the oral and documentary evidence was critical in this case because the respondents in their witness statements allege that they (or at least their parents or grandparents) paid rent to the appellant up to March 2004 and that any receipts showing that rent was paid after that date was false. This was clearly an allegation of dishonesty or fraud which had to be proved to the high standard on which courts have always insisted, including in civil cases. Any findings of fact on the receipts had to be based not only on the documentary evidence but also on the oral evidence of the witnesses tested through the process of cross-examination. It was the function of the trial judge in making that assessment to assess their character, the honesty and candour of their evidence and the quality of their recollection. When considering the credibility of witnesses, it is important to test their truthfulness by reference to objective facts proved independently of their oral evidence, in particular, by reference to any documentary evidence. Moreover, particular regard must be paid to their motives and to overall probabilities. All of these can, together, assist a trial judge in ascertaining the truth.

[97] In **Harb**, the Court of Appeal of England and Wales examined at paras [34] to [39] the trial judge's assessment of the evidence and found it wanting in material respects. I borrow much of their concerns to highlight what the learned trial judge had to do when examining conflicting evidence given by the parties at the trial. In my view, the learned trial judge's approach to the evidence was unsatisfactory in a significant respect, in that she did not refer to any of the oral evidence given by the parties at the trial. There was no identification (far less in any detail) of the questions that needed to be answered if she were to decide on the principal issues raised in the court below. The learned trial judge did not subject the oral evidence of the parties to any scrutiny particularly considering the conflicting versions given by the respective witnesses of the parties. She did not draw together the evidence from the various different sources and analyse it to make her findings in relation to the individual issues raised at the trial. This was necessary because the oral and documentary evidence of the parties pointed in different directions. The learned trial judge had to identify the relevant evidence, discuss its significance and explain why she had reached a particular conclusion. In doing so, she had to analyse the various possible implications of different strands of evidence, as well as the inherent probabilities. None of these were done by the learned trial judge.

[98] Lord Ackner in **Horace Reid v Dowling Charles and Percival Bain**³³ stated at p 6 that

“Mr. James Guthrie, in his able submissions on behalf of Mr. Reid, emphasised to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

[99] In other words, where there is a conflict of evidence at trial, the trial judge must assess the demeanour of the witnesses against: (1) contemporary documents if they exist; (2) the parties' pleaded case; and (3) the inherent probability of the rival contentions of the parties. The latter point must be considered in light of: (a) the facts and matters which are common ground or unchallenged; and (b) disputed only as an afterthought or otherwise in an unsatisfactory manner. If this approach is not adopted there is a real risk that the evidence will not be properly evaluated and the trial judge would have failed to take proper advantage of having seen and heard the witnesses.

[100] In my view, on analysis, the findings of fact made by the learned trial judge were not properly explained having regard to the oral and documentary evidence that was before her. As noted above, since there were many facts in dispute the learned trial judge had to conduct a proper evaluation of all the evidence, including consideration of its strengths and weaknesses, as well as testing what a witness says, for example, about the contents of contemporaneous documents, compared to the actual text of that document. Nowhere in her written judgment did the learned trial judge record her perception of any of the seven witnesses who gave evidence at trial. There was no thorough, or any, examination of the evidence of those witnesses to then clearly outline what weaknesses or strengths, if any, she found in their evidence. Similarly, there was no evaluation of any contradictions or inconsistencies in the evidence of any of the witnesses. The issues that arose at trial in the court below were very fact sensitive and required a thorough assessment of the oral and documentary evidence of the parties.

³³[1989] UKPC 24.

Although the learned trial made some findings of fact, she did not go on to explain how or why she had reached these conclusions. In her written judgment, the learned trial judge was required to deal with the contested points in some detail to demonstrate that the essential issues have been addressed, which parts of the evidence have been given what appropriate weight, and why.

[101] The Court of Appeal of England and Wales in **FAGE UK Ltd** mused at para [114] that the trial is not a dress rehearsal; it is the first and last night of the show. I would add that that the witnesses who give evidence at trial are not extras, they are the main actors whose performance is essential to the play itself. Without their performance there would be no play at all. A theater review must include a description (what happened and how), an analysis (interpreting themes etc.) and judgement (whether the play was successful). Likewise, a judgment (whether written or oral) given after trial must include what happened (based on the evidence of the witnesses), an analysis (an evaluation of the evidence based on the principal issues raised) and a conclusion (whether any of the parties succeed on any of these issues).

[102] In my view, the learned trial judge did not conduct the correct assessment having regard to the conflicting evidence of the parties at trial. Consequently, the evidence was not properly evaluated, and the learned trial judge did not take proper advantage of having seen and heard the witnesses. In the paragraphs that follow I will deal with the grounds of appeal seriatim.

Grounds of Appeal 2 and 3 - The Documentary Evidence – The Receipts

[103] The appellant contended, in ground of appeal 2, that the learned trial judge failed adequately to consider all the rent receipts, letters and other documentary evidence which tended to prove that the parents/grandparents of the respondents were tenants of the appellant as late as April 2011. The appellant also contended, in ground of appeal 3, that the finding of facts in favour of the respondents in regard to the period for which rent was last paid was against the weight of evidence tendered on behalf of the appellant that rent was paid by the respondents' predecessors as late as April 2010 for the period ending April 2011. In this regard, counsel for the appellant, Ms. Winnifred Duncan Phillip, submitted that the judge failed to consider the documentary evidence of the appellant, namely, receipts for the period ending April 2010 to March 2011 and the oral evidence of Miranda Belle that she collected rent from Geraldine Noel from 1997 to 2010 (when Geraldine Noel died). The appellant submitted that receipts were produced for the years 2000 to 2011 when rent was collected by Miranda

Belle. In the appellant's view, his evidence and that of Miranda Belle was not shaken during cross-examination on the issue of the receipts. The appellant also submitted that the first and second respondents pleaded that Geraldine Noel paid rent until March 2004.

[104] Counsel for the Noels submitted that the first and second respondents' mother, Geraldine Noel, paid rent only from 2000 to March 2004, and that no rent was paid to the appellant or his agent by Geraldine Noel, or either of the Noels, from April 2004. They further submitted that any receipt purporting to show that Geraldine Noel paid rent to the appellant after April 2003 was false. Counsel for the Steeles, mirroring the submission of counsel for the Noels, submitted that the third to six respondents gave evidence that their 'mother parents (sic)' paid rent to the appellant from 2000 to March 2004, and that no rent was paid to the appellant or his agent by the Steeles from 2004.

[105] At trial, in addition to the oral evidence of the respondents that their parents did not pay rent to the appellant after 2004, one objection to the documentary evidence of the appellant (the signed receipts in the name of the parents of the respondents) was the fact that one receipt was issued in the name of Alexander Steele on a date after he had passed away. In her written judgment, the learned trial judge does not refer to any of the oral evidence of the respondents dealing with this issue. There was no specific determination of whether she believed the evidence of Benedict Noel who gave contradictory evidence at trial. The learned trial judge had to intervene during cross-examination to ask him whether he understood the questions, to which he replied, 'no'. This led the learned trial judge to remark that, '[o]bviously, he does not have a clear appreciation of the questions'. There was oral evidence at trial that Benedict Noel might be a person with an intellectual or cognitive disability. The same also applies to the evidence of Martha Noel. There was evidence at trial that she too might be a person with an intellectual or cognitive disability.

[106] In my view, it was important for the learned trial judge to assess the evidence of Benedict Noel and Martha Noel considering this. The learned trial judge erred in not referring to any part of their oral evidence at trial. At the hearing of the appeal, the Court questioned counsel for the Noels as to whether an issue in the appeal was that learned trial judge did not consider relevant and material evidence in her evaluation of the evidence such that it affected the correctness of her conclusion at para [44] of the written judgment. Counsel replied that, at paragraphs [40] to [43], the learned trial judge considered all

the relevant material. In my view, it was incumbent upon the learned trial judge to determine whether Benedict Noel or Martha Noel were telling the truth in their filed witness statements given their inability, as the trial judge acknowledged for Benedict Noel, to answer the questions posed in a direct and unconfusing manner. The same had to be done for all the other witnesses who gave evidence at the trial. As mentioned above, cross-examination in an adversarial system is the process of questioning witnesses to test their credibility and uncover inconsistencies in their evidence. The learned trial judge, in not having regard to the oral evidence of the witnesses at trial, in my view, had not taken proper advantage of her having seen and heard the witnesses. Consequently, the learned trial judge did not consider all the material evidence that was before her in arriving at her conclusions on the facts and her conclusion was therefore against the weight of the evidence that was adduced before her. This is a material error that would justify appellate intervention.

- [107] In arriving at her conclusion at para [44] of her written judgment that she was more inclined to find for the respondents that their predecessors paid rent to the appellant, and were tenants thereof, up until April 2004 in the case of the Noels, and 2003 in the case of the Steeles, the learned trial judge specifically considered the following: (1) a receipt that was signed by the appellant but issued in the name of Alexander Steele when Alexander Steele had died in 2009 (at para [40] of the written judgment); (2) the discrepancy in the dates and numbers of receipt number 95 and receipt number 96 (at para [41] of the written judgment); (3) there was no evidence before the court of the appellant's receipts for rent for the period 1997 to 2000 and that the receipts exhibited commenced from the year 2000 (at para [42] of the written judgment); and (4) there was no receipt before the court with respect to the rent which the appellant asserted was paid on behalf of the Steeles relative to the year 2012 (at para [42] of the written judgment). Since these formed the gravamen of the appellant's grounds of appeal, I will now consider each of them to ascertain whether these complaints are also justified.

Ground of Appeal 4 - A receipt in the name of deceased Alexander Steele

- [108] The appellant contended, in ground of appeal 3, that the learned trial judge placed undue weight on the receipt issued to Alexander Steele on 16th April 2010 given that Alexander Steele had died in September 2009. At para [40] of her written judgment, the learned trial judge observed that: (1) the appellant relied on copies of receipts to prove the payment of rent by the predecessors of the

respondents; (2) one such receipt was signed by the appellant and appeared to be issued to Alexander Steele on 16th April 2010; and (3) this was factually impossible as Alexander Steele died in 2009.

[109] Counsel for the appellant submitted that the learned judge placed undue weight on this receipt and treated it as suspicious, while failing to consider the appellant's oral and documentary evidence. Counsel for the appellant also submitted that it was the appellant's evidence that Alexander Steele died on 30th September 2009, and his family remained in Alexander Steele's house. Counsel further submitted that the appellant also gave evidence that his agent had collected yearly rent from Alexander Steele's wife, Catherine Steele, and issued receipts to her. It was explained by counsel that the appellant testified at trial that in April 2010, he personally collected rent from Catherine Steele when he visited Grenada and that the rent receipts for the period April 2010 to March 2011 were prepared by his agent, Miranda Belle, but he had signed them. During cross-examination by counsel for the Noels, the appellant clarified that the money was received from Catherine Steele, and the receipt was made out to Alexander Steele because he was the one that was renting the Property.

[110] Counsel for the appellant submitted that the learned trial judge failed to consider that the appellant and his agent, not being legally trained persons, made a simple error in putting the name 'Alexander Steele' on the receipt was always done in the past even though he had died. Counsel further submitted that this does not negate the fact that it was the appellant's evidence that the rent was actually paid to Alexander Steele's wife, Catherine Steele, who continued possession of the property at the time when the receipt was issued.

[111] Neither counsel for the Noels nor the Steeles provided written submissions on this point concerning the receipt dated 16th April 2010 that was issued in the name of the deceased, Alexander Steele. Counsel merely submitted that the respondents did not pay any rent to the appellant after 2004 and that no rent was ever paid by any of the respondents to the appellant.

[112] At the hearing of the appeal, the Court questioned whether the learned trial judge considered the explanation given by Miranda Belle for the receipt being in the name of Alexander Steele. Counsel for the appellant replied that the explanation given was not considered by the learned trial judge in her assessment of that evidence. The Court also asked counsel for the Steeles whether it was open to the

learned trial judge to reject all the receipts put in evidence by both the appellant and Miranda Belle based on her finding concerning this one receipt, even if correct, that this was 'factually impossible'. Counsel replied that the learned trial judge was not clear as to why she rejected the other receipts.

[113] As mentioned above, the learned trial judge did not assess any of the evidence that was adduced at the trial including the explanation given by the appellant and Miranda Belle concerning this receipt. It was incumbent upon the learned trial judge, having heard the appellant's responses to the questions posed to him, to determine whether he could be believed or not. The learned trial judge did not refer to or assess the any of the appellant's oral evidence at trial to determine whether she believed him or not. She did not assess the appellant's response or the explanation given by Miranda Belle concerning the issuing of a receipt in the name of Alexander Steele at a time when he was deceased. In not doing so, the learned trial judge, in my view, placed undue, and I would add improper, weight on that receipt without any regard to the explanation given by the appellant and Miranda Belle at trial. Importantly too is the fact that even if the learned trial judge had assessed the appellant's oral evidence and rejected this receipt as not credible, that alone would not justify the learned trial judge's repudiation of all the other receipts. It was incumbent upon the learned trial judge to explain how and why she was taking such a course. This also amounted to demonstrable omission by the learned trial judge to consider relevant evidence that was before her, which, in my view, amounts to a material error that would also justify appellate intervention.

Ground of Appeal 5 - Receipts number 95 and 96

[114] The appellant contended, in ground of appeal 5, that the learned trial judge attached undue weight to the receipts numbered 95 and 96 issued to Alexander Steele without giving due consideration to the previous and subsequent receipts. At para [41] of her written judgment, the learned trial judge stated as follows: (1) also questionable was the associated numbers on the receipts provided; (2) receipt number 95 in the name of Alexander Steele was dated for the rental period of 2008-2009, whereas receipt numbered 96, in said name of Alexander Steele, was dated for a period prior to the period contemplated in receipt 95, as 2007 to 2008; and (3) this was from copies of the same receipt book.

[115] At the hearing of the appeal, the Court asked counsel for the appellant whether this was an issue that arose during the trial or was part of the respondents' pleaded case. Counsel responded that this issue

was not raised at trial or dealt with in the pleadings and that there was no cross-examination on this issue that was taken for the first time by the learned trial judge in her written judgment. It is evident from reading the transcript of the proceedings in the court below that, at the trial, neither the appellant nor Miranda Belle were cross-examined on either receipt number 95 or receipt number 96 concerning any alleged inconsistency in either the number or the dates found on both receipts. If this was done, they would have had the opportunity to provide responses that the trial judge would have to consider in her assessment of these two receipts. The trial judge therefore considered an issue that had been neither pleaded nor canvassed before her at trial. As was stated at para [21] by the Court of Appeal of England and Wales in **Al-Medenni v Mars UK Ltd**³⁴ it is fundamental to the adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other, and that the function of the judge is to adjudicate on those issues alone. It is manifestly unfair for a trial judge to consider an issue that was not tested by cross-examination at trial or canvassed by the parties or on which none of the counsel for the parties made submissions before her. The Court of Appeal of England and Wales in **Satyam Enterprises Ltd v Burton and another**³⁵ stated at para [36] that in United Kingdom's system of civil litigation that approach is impermissible, and a misunderstanding of the judge's function which is to try the issues the parties have raised before her.

[116] In **National Lotteries Authorities v Jerome DeRoche**,³⁶ this Court stated at para [38] that the claimant must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail. In relation to witness statements, this Court stated at para [40] that: (1) a witness statement constitutes the evidence to prove an allegation of fact made in the statement of claim; (2) a witness statement provides the details or particulars of the issues that arise from the pleader's case; and (3) the content of a witness statement must, on analysis, be capable of being properly regarded as particulars or details of allegations already made in the pleadings. In other words, once the case is sufficiently pleaded, then a witness statement may furnish the particulars and details of the allegations or facts contained in the pleadings: **National Lotteries Authorities** at para [41]. This analysis must, by parity of reasoning, also apply to a trial judge who cannot decide a matter where neither of the parties

³⁴ [2005] EWCA Civ 1041.

³⁵ [2021] 2 BCLC 724.

³⁶ GDAHCVAP2021/0025 (Unreported, delivered 21 November 2022).

pleaded facts in support of their rival contentions or in respect of the principal issues which are to be decided at trial before the judge.

- [117] In addition, I agree with counsel for the appellant that the learned trial judge gave undue or improper weight to these two receipts without the benefit of any explanations that either the appellant or Miranda Belle might have proffered at trial. The learned trial judge could therefore not be said to have given that evidence a balanced consideration because her conclusion was rationally insupportable. In my view, this ground of appeal succeeds and justifies appellate intervention.

Ground of Appeal 6 - No receipt allegedly issued for 1997-2000

- [118] In ground of appeal 6, the appellant contended that the learned trial judge improperly considered and placed undue weight on the fact that the appellant produced no rent receipts from 1997 to 2000. In the appellant's view, this was insignificant since all respondents admitted that rent was indeed paid to the appellant albeit they claimed that it was for a period ending in April 2004. At para [42] of her written judgment, the learned trial judge stated that there was no evidence before the court of the appellant's receipts for rent for the period 1997 to 2000 and that the receipts exhibited commence from the year 2000. In my view, the receipts during those years were not relevant to defeating the respondents' claim for adverse possession based on section 4 of the **Limitation Act**. The learned trial judge did not consider the evidence of Miranda Belle given during cross-examination at trial that receipts were issued for the years 1997-2000 in another receipt book but that she 'cannot put her hand on that book'. The trial judge considered this issue without regard to the evidence of Miranda Belle at trial where she provided an explanation for not tendering those receipts in evidence at trial. At the hearing of the appeal, counsel for the appellant submitted that the learned trial judge did not consider the evidence of Miranda Belle to decide whether she accepted or rejected that evidence. In my view, the learned trial judge erred in not considering the explanation given by Miranda Belle when evaluating this evidence that factored into her conclusion at para [44] of her written judgment. The learned trial judge therefore did not analyse properly the entirety of the relevant evidence. The appellant succeeds on this ground of appeal which also merits appellate interference.

Ground of Appeal 7 - No receipt allegedly issued for 2012

[119] In ground of appeal 7, the appellant contended that the learned trial judge placed undue weight on the fact that no receipt was produced for the year 2012. The appellant contended it was not his evidence that rent was paid for 2012, but it was the evidence of Miranda Belle that she did not collect rent for April 2011 to March 2012 because of ongoing discussions with the siblings of the respondents to purchase part of the Property. At para [42] of her written judgment, the learned trial judge stated that there was no receipt before the court with respect to the rent which the appellant asserted was paid on behalf of the Steeles relative to the year 2012. Similar to ground of appeal 6, the learned trial judge did not consider the evidence of Miranda Belle that rent was not collected from the respondents because of the ongoing negotiations to sell part of the Property to Anastasia Noel and Lindy Alexander. In considering this evidence, it was incumbent upon the learned trial judge to consider the explanation provided by Miranda Belle. The learned trial judge did not do so. The learned trial judge therefore did not analyze properly the entirety of the evidence. Consequently, the learned trial judge fell into error in not considering the context provided by Miranda Belle in her explanation given at trial. This ground of appeal therefore succeeds.

Ground of Appeal 8 - The 2010 letters - Offer to Purchase

[120] In ground of appeal 8, the appellant contended that the learned trial judge placed inordinate weight on the October 2010 letter of first refusal addressed to Geraldine Noel who had died in June 2010. The appellant contends that, in fact, the first refusal letter dated 10th April 2010 was addressed to Geraldine Noel when she was alive; and that the October 2010 letter was a follow up letter containing the purchase price for the Property. The appellant explained that it was his evidence that the October 2010 letter was nonetheless addressed to Geraldine Noel because the first and second respondents, who continued to live in her house, were not her only children. Therefore, the appellant continued, the 2010 letter was not addressed to them specifically. At para [43] of her written judgment, the learned trial judge stated that a further inconsistency was the appellant's offer of first refusal to Geraldine Noel by way of letter dated October 2010, when it was a fact that Geraldine Noel passed away on 25th June 2010.

[121] The learned trial judge in referring only to the October 2010 letter makes no reference to the April 2010 letter which provide relevant context for the second letter of October 2010. More importantly, however, the learned trial judge did not consider the explanation provided by the appellant in his witness

statement for addressing the October 2010 letter to Geraldine Noel when she had already died. The learned trial judge also makes no reference to the appellant's responses relative to this issue that he gave during cross-examination at trial. The trial judge did not refer to the appellant's own evidence that the 2010 letter was delivered to Geraldine Noel. The learned trial judge also did not refer to the evidence of Miranda Belle during cross-examination at trial explaining why the letter was so addressed. At the trial, Miranda Belle explained that she continued correspondence in Geraldine Noel's name because she was instructed by the appellant to do so.

- [122] It cannot be gainsaid that it is the function of a trial judge at trial to weigh various pieces of competing evidence, both documentary and oral, to determine who to believe and the relative weight to be given to any documentary evidence. In my view, a trial judge cannot rely on documentary evidence given at trial in making findings of fact without properly considering any explanations given by a witness relative to that evidence. She may refuse to believe the witness, but she must explain why. The issue concerning addressing correspondence to Geraldine Noel after she had passed away required a careful analysis by the learned trial judge of the oral evidence of the parties on this issue, and it was for the trial judge to arrive at her conclusion after properly considering all the evidence relevant to that issue. In not considering a critical explanation given by a witness, the learned trial judge committed a reversible error warranting appellate interference.

Grounds of Appeal 9 and 12 - The 2007 letters – Construction of the extension on the houses

- [123] In ground of appeal 9, the appellant contended that the learned trial judge failed to mention or consider the letters written to Geraldine Noel and Alexander Steele in 2007 regarding extensions to their respective houses. In the appellant's view, these letters further supported his contention that Geraldine Noel and Alexander Steele were both his tenants up to that time. In ground of appeal 12, the appellant contended that the learned trial judge placed undue weight to the Steeles' addition of a bathroom in 2007 without adequately considering the appellant's letter of warning to them as well as the payment of rent by them for that year as well as the ensuing years up to April 2011.
- [124] The appellant's evidence was that in 2007 when he observed both Alexander Steele and Geraldine Noel had added to their houses without his permission, he wrote to them demanding they cease doing so. It was the appellant's evidence that, after the letter was received, this was followed with discussions

with Alexander Steele and that he (the appellant) agreed that Alexander Steele could build the concrete bathroom because of Alexander Steele's illness. The evidence of Rachel Steele was that she constructed the concrete bathroom on the house that her family had on the Property. The learned trial judge mentioned this evidence at para [52] of her written judgment but only when reasoning that the construction of the concrete bathroom by the Steeles demonstrated that they had possession 'in their own right'.

- [125] It is axiomatic that a trial judge does not need to refer to all evidence in giving her judgment. However, where, as here, the evidence is related to a critical issue for determination, the trial judge must consider that evidence. It is also true that the fact that a trial judge does not consider a specific piece of evidence does not mean that it was not considered by the trial judge in arriving at her conclusion. In my view, this was a critical piece of evidence relative to the issue of whether the parents of the respondents were tenants during the period 2000-2011. In not considering this evidence, the learned trial judge also erred.

Ground of Appeal 10 - The defence in the Magistrate's Court

- [126] In ground of appeal 10, the appellant contended that the learned trial judge failed properly to consider the defence of the first and second respondents filed in the 2015 Magistrate's Court proceedings whereby the first to third respondents stated that in 2013 they found out that the appellant had no proper title to the Property and that since discovering that mistake they have not paid any further rent to the appellant. The appellant also contended that this was conclusive proof by their own admission that the first to third respondents decided not to pay any rent to the appellant since 2013 when they discovered the alleged defect in the appellant's title to the Property. The appellant stated that the learned trial judge failed to consider this defence together with the letter written by the attorney at law of the first and second respondents to Anastasia Noel in late December 2013 advising Miranda Belle, the appellant's real estate agent, that the appellant did not have good title to the Property. In the appellant's view, these two pieces of evidence pointed clearly to the fact that there was no query or doubt regarding the appellant's title to the Property until 2013 and not 2003 as alleged by the respondents.

[127] The first to third respondents' defence in the Magistrate's Court pleaded, among other things, as follows: (1) the first to third respondents in 2013 found out that the appellant had no title to the Property when the appellant by his agent, Miranda Belle, wrote letters to the first to third respondents, or persons concerned with the first to third respondents, showing that the appellant claimed the Property by virtue of long possession under a Statutory Declaration; (2) any rent paid by or on behalf of the first to third respondents to the appellant or his agent was paid under a mistake of Law; and (3) since discovering such mistake, the first to third respondents have not paid any further rent to the appellant or any agent of his.

[128] In his pleaded case, the appellant stated that, in the defence filed in the Magistrate's Court, the first to third respondents admitted that they paid rent to him and that any rent that they paid was a mistake of law or fact. His evidence at trial was that the first to third respondents, in the defence filed in the Magistrate's Court, admitted to the payment of rent by their parents but that any such rent was paid under a mistake of fact or law. At trial, the appellant was not cross-examined by either counsel for the Noels or counsel for the Steeles on this aspect of his evidence. The Noels in their defence admitted that proceedings were brought against them in the Magistrate's Court. During cross-examination at trial, in response to the question that the payment of rent stopped when the discovery was made of the appellant's title in 2013, Benedict Noel replied 'yes'.

[129] The learned trial judge, acutely aware that the proceedings in the Magistrate's Court were directly relevant to the issue she had to decide, asked counsel for the parties to address her on the proceedings in the Magistrate's Court. The learned trial judge did not, however, narrow the issue that arose by virtue of the defence filed by the first to third respondents. In oral submissions made before the learned trial judge, counsel for the appellant submitted that, in the defence filed, the first to third respondents admitted to paying rent to the appellant and not paying further rent after discovering that the appellant allegedly did not have proper title to the Property. Counsel continued that in that defence in the Magistrate's Court the respondents purported to claim 'long possession'. Counsel also stated that the magistrate did not rule on the jurisdictional issue raised by counsel for the respondents but dismissed the appellant's claim for possession and arrears of rent because the first to third respondents were not tenants of the appellant. The only substantive submission by the respondents was made by counsel for the Noels who submitted that, in the Magistrate's Court, the first and second respondents were claiming the land by virtue of 'long possession'. Counsel for the Noels did not

address the issue raised squarely by the appellant that the first and second respondents admitted paying rent until 2013 when they found out that the appellant did not have a proper title to the Property.

[130] At para [44] of her written judgment, the learned trial judge observed that: (1) regarding the defence of the first, second and third respondents filed in the Magistrate's Court on 25th August 2015 which the appellant relied on as evidence that the respondents paid rent, she was of the view that the defence was inconclusive as to when rent was paid so as to confirm the payment of rent by the first to third respondents; and (2) it stood, the appellant had not produced any document evidencing payment of rent in the name of the respondents.

[131] Counsel for the Noels, at the hearing of the appeal, stated that this issue of the defence in the Magistrate's Court was not an issue before the learned trial judge. This is clearly not borne out by reading the transcript of proceedings in the court below, the evidence of the appellant in his witness statement and his oral evidence at trial, and the oral submissions made at trial, at the invitation of the learned trial judge, by counsel for the parties on the issue of the Magistrate's Court proceedings. I reject counsel's submission that this issue was not included in the appellant's pleadings or witness statement as this contradicts the pleadings, including the defence of the Noels, and evidence in the proceedings in the court below. It is also contrary to the understanding by the learned trial judge at para [44] of her written judgment of the manner or the way in which the appellant's deployed that document at trial.

[132] It is self-evident that the defence filed by the first to third respondents in the Magistrate's Court is not evidence. Neither party put before the learned trial judge a transcript, or agreed note, of proceedings before the Magistrate's Court with a view to ascertaining what evidence, if any, did the first to third respondents deploy in these proceedings. The learned trial judge did not request this evidence of the parties. This evidence is highly relevant to a critical issue in dispute, and the transcript of the proceedings in the Magistrate's Court might shed some relevant light on the respective positions of the parties taken on this issue in 2015. It was the function of the learned trial judge to weigh this document against all the evidence of the parties and accord it appropriate weight as was justified by the circumstances as she saw it. The conclusion of the learned trial judge that the defence is 'inconclusive as to when rent was paid to confirm the payment of rent by the [first to third respondents]' is not supported on a plain reading of the defence. The defence in the Magistrate's Court was relevant to the

following critical sub-issues the learned trial judge had to decide: (1) whether the respondents were correct in stating that they found out that the appellant did not have title to the Property in 2003; (2) whether the respondents were correct in stating that they did not pay any rent to the appellant after the period 2003/2004; and (3) whether the respondents were aware of or participated in the negotiations for the purchase of the Property by Lindy Alexander and Anastasia Noel. This would undermine their defence of adverse possession based on section 4 of the **Limitation Act**. The learned trial judge did not weigh this document against the other evidence at trial to arrive at her conclusion on each of these sub-issues. At the hearing of the appeal, the Court questioned whether the proper inference to be drawn from the defence filed in the Magistrate's Court was that the first to third respondents paid rent, and that they paid rent up to that time. Counsel for the appellant agreed. My provisional view is that a literal reading of the defence suggests, at the very least, that the first to third respondents were paying rent up to 2013. Whether the learned trial judge should accept, or what weight she should ascribe to, the defence is another matter altogether and was a matter for her as a trier of fact.

- [133] In my view, the finding by the learned trial judge that the 'defence is inconclusive as to when rent was paid to confirm the payment of rent by the [first to third respondents]' showed that the learned trial judge plainly misunderstood the evidence before her. The learned trial judge had to assess all the evidence, giving whatever weight to the defence she felt justified to enable her to conclude on a critical issue in dispute between the parties of whether the date on which the respondents last paid rent to the appellant was either 2004 as the respondents allege or 2013 as the appellant alleges. The result of not doing so meant that the learned trial judge made findings that were not properly analyzed and were against the weight of the evidence adduced at trial and that the learned trial judge did not in any event consider. This also merits appellate interference.

Grounds of Appeal 11, 13 and 14

- [134] As I mentioned earlier, grounds of appeal 11 and 13 were based on findings of fact made by the learned trial judge. Considering my conclusion on the main grounds of appeal, it is not necessary to express any concluded view on either of these grounds of appeal.

[135] In relation to ground of appeal 14, there is clear authority by this Court at para [13] in **Arnold Celestine v Carlton Baptiste**³⁷ that the **Limitation Act** can only be used as a shield and cannot be used as a sword in acquiring a declaration of ownership to property. Consequently, it was not open to the learned trial judge to grant the respondents, on their counterclaim, a declaration that they were entitled in law (based on the **Limitation Act**) to any part of the Property.

Conclusion

[136] The learned trial judge, as mentioned above, erred in making the findings of fact that she made in her written judgment. This was based primarily on the omission by the learned trial judge to assess the documentary and oral evidence that was given at trial including the responses to questions posed by counsel to the witnesses. The learned trial judge did not assess any of the evidence of the seven witnesses who gave evidence at trial. There was no assessment of: (1) what evidence from which witness she accepted in relation to what part of the history of the case or of the issues to be decided or (2) which witness was being accepted as wholly or partly reliable or rejected as wholly or partly unreliable, and if so why. The appellant therefore also succeeds on ground of appeal 1, namely, that the decision of the learned trial judge is against the weight of the evidence. The learned trial judge unfortunately fell into error by not carrying out that central task of a trial judge when faced at trial with disputed documentary and oral evidence. The learned trial judge did not take advantage of having heard and seen the witnesses at trial. Consequently, I have come to the reluctant but firm conclusion that appellate interference is exceptionally warranted in this case. The usual caution in overturning a trial judge's findings of fact does not apply here because the learned trial judge did not make factual findings based on her assessment of the credibility or reliability of the witnesses who gave oral evidence, or the weight to be attached to their evidence.

[137] These assessments mentioned above should have formed a critical part of the findings of fact based on disputed oral and documentary evidence presented at trial before the learned trial judge. There are clear indications in her written judgment that the learned trial judge did not consider all the evidence that the parties presented to her at the trial. In my view, the findings of fact made by the learned trial judge cannot stand because they are plainly wrong. The learned trial judge erred in law in making the orders she made at para [64] of her written judgment. I have expressed no concluded view on the

³⁷ GDAHCVAP2008/011 (delivered 11th January 2010, unreported).

credibility or reliability of the evidence presented at trial in the court below and consequently the lower court is not fettered in relation to findings it may eventually make on a retrial.

Disposition

- [138] Based on the foregoing, I would accordingly allow the appeal against the decision of the learned trial judge on all grounds of appeal, excluding grounds of appeal 11 and 13, and set aside the orders she made at para [64] of the written judgment. Since the required evaluation and assessment of the oral and documentary evidence was not undertaken at trial by the learned trial judge, I am left with no option but to remit the matter to be tried *de novo* before another High Court Judge. This is not a case where this Court is in as good a position as the trial judge to make its own findings of fact. In these circumstances, I would make no order as to costs.
- [139] I apologize to the parties for the delay in delivering this judgment, which was written during the month of February 2026. Further deliberation since writing this judgment has ultimately resulted in the unanimous decision of this Court.
- [140] I am grateful for the assistance provided by Kings Counsel and counsel for the parties.

I concur.
Margaret Price Findlay
Justice of Appeal

I concur.
Gerard St. C Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar