

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0106

BETWEEN:

CYNTHIA JONES

CLAIMANT

(Beneficiary of the Estate of Percy Cornelius Jones, Deceased)

(By her Attorneys on Record Marilyn Ottley and Winston Ottley)

AND

LEROY WILSON-JONES

FIRST DEFENDANT

(Beneficiary of the Estate of Percy Cornelius Jones, Deceased)

CELIA YORKE

SECOND DEFENDANT

(Beneficiary of the Estate of Percy Cornelius Jones, Deceased)

JACQUELINE WILSON

THIRD DEFENDANT

SHELLY-ANN LAYNE

FOURTH DEFENDANT

PATRICE WILSON

FIFTH DEFENDANT

Appearances:

Mr. Joseph Delves for the Claimant

Mr. Michael Wylie for the Defendants

2020: 4 February
31 March

JUDGMENT

Byer J:

[1] The claimant commenced this matter by way of Claim Form filed on the 2nd August 2017.

[2] The claim form sought the following relief:

- i. A Declaration that the claimant is entitled to the parcel of land set out in Survey Plan G60/102; or alternatively a Declaration that the claimant is entitled to the parcel of land she presently occupies.
- ii. An order that Deed Number 2526 of 1991 be cancelled.
- iii. An order that Deed Number 2527 of 1991 be cancelled.
- iv. An order that Deed Number 3669 of 2013 be cancelled.
- v. A Declaration that the claimant is entitled to the parcel of land she presently occupies.
- vi. Such further or other relief as the Honorable Court deems just.
- vii. Costs.

[3] However by the time the matter had come on for trial, the prayers had been whittled down to one. By order of the Learned Master, Dyer M, dated the 18th October 2017, the deeds numbered 2526 of 1991, 2527 of 1991 and 3669 of 2013 were cancelled based on the admissions contained in the defence as filed.

[4] Therefore at trial the sole issue was whether the claimant was entitled to a declaration of ownership for a lot of land contained in Survey Plan G60/102 or a declaration of ownership in relation to the portion of land that she presently occupies.

[5] A summary of the facts which led to this claim are as set out in the defendants submissions filed in the court on the 24th February 2020 and are as follows with a few amendments:

- (i) The claimant's father Percy Jones, deceased, died intestate in 1988. He owned a parcel of land at Beachmont, Kingstown, where he lived until his death. He acquired the land in 1947, which bears registration number 5 of 1948.
- (ii) The claimant alleges that sometime in the early 1980s her father told her to move her board house from Sion Hill, where she was living, unto his land at Beachmont and that the parcel of land on which she moved her house would be hers.
- (iii) The claimant did not move her house onto her father's land at Beachmont until 1991 or 1992, after the death of her father. The board house was later replaced in 2006 by the concrete house in which she still resides.
- (iv) The claimant, by her Attorneys on Record, Marilyn Ottley and Winston Ottley, now seek to assert an interest in the lands she occupies by proprietary estoppel.
- (v) The defendants dispute the claimant's assertion that their father told the claimant that she could move her house onto his land. They assert that it was at their insistence and with their assistance that the claimant moved her board house after the death of their father to escape an abusive relationship.
- (vi) Moreover, the defendants averred that the concrete house in which the claimant lives was built by them with little or no contribution from the claimant and her children.

- [6] It was therefore clear to the court that the question of the entitlement of the claimant was solely dependent on whether she could prove that she was permitted to rely on the intervention of equity.
- [7] The sole issue therefore as this court sees it, is as follows:
Whether under the doctrine of proprietary estoppel, an equity has arisen in the claimant's favour as against the estate of Percival (Percy) Jones (the deceased).

The Claimant's Submissions

- [8] The essence of the submissions filed on behalf of the claimant was that during the lifetime of the deceased, the deceased had made a promise to the claimant that the subject property would be hers.
- [9] In relying on this promise, the claimant submitted that she had proven to the court that she had been living on the land for the last 30 years. That her occupation had begun during the lifetime of the deceased and that having placed a concrete foundation on the land to which the deceased never objected, she thereafter took up occupation of the parcel of land and built her home which is now concrete.
- [10] Having therefore acted upon the promise to her detriment by the erection of the house which was wooden at first and then converting the same to concrete, the claimant's submission was that it would be now unconscionable to allow the defendants to reap the benefits of her hard work and as such she should be entitled to the fee simple interest of the land as set out in the plan G60/102 (the land the subject matter of this action).

The Defendants' Submissions

- [11] The defendants unsurprisingly submitted to the contrary.
- [12] In the defendant's submissions, they stated that the deceased had made no promise as alleged to the claimant. In fact they submitted that the deceased never wanted the claimant on his land while she was involved romantically with a particular partner and that even if the deceased had given her permission to come onto and remain on the land that it was only after the death of the deceased that the claimant acted on the said permission. The defendants however admit and accept that the claimant is in fact in occupation of a parcel of land on the land of their deceased father but that this entry had been effected upon the intervention and insistence of the defendants, her siblings and not her father, the deceased.
- [13] The defendants further submitted that if however, the court found that the deceased had made an assurance or a promise to the claimant, they say that the claimant in any event did not rely on that assurance. The defendants submitted that in order for the claimant to avail herself of this equity, it was imperative that the deceased knew of her reliance on that promise. This was not the case at bar. The claimant's entry having occurred after the death of the deceased would not have been in reliance on any such assurance, as the death of the deceased would have extinguished the same, if it existed at all. Therefore, the deceased not knowing of the reliance, the claimant was barred from relying on the principles of proprietary estoppel as against the estate of the deceased but they accepted that she was entitled to a portion of the land of the deceased pursuant to the laws of intestacy.
- [14] Finally the defendants submitted that the claimant having moved onto the deceased's land, instead of having suffered any detriment from doing so was rather the beneficiary of several advantages. The defendants listed these as the financial and physical assistance of her siblings to move the initial wooden

house and the later conversion to concrete, residing in the house rent free and continued to contribute to her financial support while she lives on the land.

- [15] The defendants therefore made it clear that the claimant has not made out her claim under the principles of proprietary estoppel and her claim should be dismissed in its entirety.

Court's Analysis and Considerations

- [16] Before I address my mind to the sole issue for determination, I wish to mention that in the submissions of counsel for the claimant he appeared to have raised an additional issue relating to the first defendant. This issue as indicated by the claimant was whether the first defendant was entitled to administrate for the estate of the deceased and then claim by deed of assent a portion of the property. This however was not a matter pleaded and it was not raised at trial. This court is cognizant that a party is bound by their pleadings and it is not open to them to either raise a matter that was not foreshadowed in there, to do so in witness statements or in submissions¹. I therefore will not be addressing my mind to that matter as raised by the claimant.
- [17] I also wish to state for the record the reason why there was no evidence given on behalf of the defendants at trial of this matter.
- [18] By order of the Learned Master Moise (as he then was) dated the 9th April 2018, case management directions were given and the date for the filing of witness statements was the 29th June 2018. The defendants however filed their witness statements on the 19th March 2019, almost one year later. By Notice of Application filed on the 5th April 2019, the defendants sought an extension of time and relief from sanctions for the late filing of the witness statements. The application was dismissed by this court after hearing the arguments in support of the application and the evidence filed in support of the same, that the defendants had failed to meet the requirements of Part 26.8 CPR 2000. The dismissal of this application therefore prevented the defendants from calling evidence at the trial of the said matter.
- [19] The trial of this matter therefore proceeded only on the evidence of the claimant's two children with the burden to prove their case on a balance of probabilities.
- [20] The basis of the case of the claimant as recognized and accepted by the defendant was whether the claimant in the circumstances of this case is entitled to rely on the equitable principles of proprietary estoppel to claim 8,015 square feet of the land of the deceased at Beachmont, St Vincent.
- [21] In order to answer this, it is therefore clear that first and foremost, the court must be clear as to the principles of proprietary estoppel and then address its mind as to whether the principles can be applied to the case at bar to afford the claimant the declaration as sought.
- [22] Proprietary estoppel in its broadest sense is "*where one person (A) has acted to his detriment on the faith of a belief which was known to and encouraged by another person that he is going to be given a right over B's property. (B) cannot insist on his legal rights if to do so would be inconsistent with A's belief*"². (My emphasis added)
- [23] Thus the starting point in assessing and analyzing whether proprietary estoppel can even arise, one must ask three questions. As set out in the case of **Crabb v Arun District Council**³ by Scarman LJ, these

¹ **George W Bennett Bryson's & Co. Ltd v George Purcell** ANUHCAP2011/0023

² **Irving Huggins v Gertrude Huggins** NEVHCV2001/0056 per Baptiste J at paragraph 4

³ [1976] Ch. 179 at 193

questions are “first is there an equity established? Secondly what is the extent of the equity established, if one is established? And thirdly what is the relief appropriate to satisfy the equity?”

- [24] So how does the court address its mind to this exercise? When an assessment is made of all the authorities that speak to this equitable relief, it is clear that “the doctrine of proprietary estoppel cannot be treated as subdivided into three of four watertight compartments”⁴ and that “...proprietary estoppel can apply to a wide variety of factual situations and any summary formulation is likely to prove to be an oversimplification. The cases show a wide range of variation in both the main elements, that is, the quality of the assurances which gave rise to the claimant’s expectations and the extent of the claimant’s detrimental reliance on the assurances.”⁵
- [25] However what the courts have recognized is that these are matters of fact which have to be established in order for a claimant to establish their right under this equity⁶. Guidance for this process has been provided by Fry LJ in the 19th century case of **Wilmot v Barber**⁷. The Learned Judge in that case spoke to the behaviour of the person who is entitled to rely on their legal rights as amounting to “fraudulent” if to allow the enforcement of that right would amount to behaviour that is unconscionable. However, Scarman LJ in the **Crab v Arun**⁸ case stated the use of the term “fraudulent” did not in the 19th century have the same meaning as it does in the 20th and dare I say the 21st century, but simply that the behaviour would have to be unjust, inequitable and unconscionable⁹.
- [26] What are these matters of fact that have to be considered?¹⁰ Firstly, the claimant must have made a mistake as to his/her legal rights; secondly the claimant must have expended some money or must have done some act on the faith of the mistaken belief; thirdly that the defendant who is the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the claimant. If he does not know of it he is in the same position of the claimant and the doctrine is founded upon conduct with a knowledge of your legal rights; fourthly, the defendant must know of the claimant’s mistaken belief of his rights and finally the possessor of the legal right must have encouraged the claimant to spend money or to undertake other acts either directly or by abstaining from asserting his legal right.
- [27] That having been said we can now address the evidence that was led on behalf of the claimant and assess whether that has met the threshold permitting the intervention of equity.
- [28] In this regard, this court was presented with the evidence of the children of the claimant. Not the claimant herself. On cross examination it was suggested to the children that this action was commenced against the wishes of the claimant, a suggestion that was vehemently denied by both the son and daughter of the claimant. However, it cannot be lost on this court that there was no explanation as to why the claimant was not in a position to provide a witness statement nor did the court in fact have sight of the power of attorney upon which the claimant’s children were acting on her behalf. However, the court is satisfied that the same does exist and relies on the presumption that all was in order for the children to bring the claim, that presumption having not been rebutted nor challenged by the defendants.

⁴ **Gillett v Holt and anr** [2000] 2 All ER 289 at 301

⁵ **Jennings v Rice** [2002] EWCA Civ 159 at para 44

⁶ **Crab v Arun** Op cit

⁷ (1880) 15 Ch D 96 at 105

⁸ Op Cit

⁹ Op Cit at page 195

¹⁰ **Wilmot v Barber** Op Cit

The Assurance/Promise

[29] The evidence that was led that purported to support the contention that the deceased had promised the claimant the parcel of land that she occupies can be found primarily in the evidence of her daughter Marilyn Ottley-Miller.

[30] Mrs. Ottley-Miller in her witness summary of the 29th June 2018 had this to say:

"13. My mother has been living in the aforementioned parcel for the past 30 or so years as aforesaid. She moved onto the land with the clear and express permission to build and live there by the Deceased.

14. During her lifetime, Percy Cornelius Jones, the father of my mother and the first two defendants, gave my [mother] permission to build a house on the said land. The said Percy Cornelius Jones indicated to the claimant that that home would be hers. In reliance on this promise my mother built a concrete structure/foundation on the subject land. [Verbatim]

Further Particulars

11. Before she built the board house, my mom had been given permission by Percy Jones to build a permanent home on his land. So she started a concrete house foundation.

12. I was there when her father and my mother went to work and my mother used to be around him a lot. They spent a lot of time talking on his porch.

13. She did not put the board house on the Beachmont/Richmond Hill land initially because my grandfather got mad at my step dad at the time. He told my mother that she and my brother and I could [live] there but not my step dad, Clifton Cupid. [Verbatim]

14. When she broke up with my step dad, my mom got persons to help her move the house to Beachmont. Her dad wanted her to move onto the land before he died.

15. When she moved the house, my brother my mum and I lived there with my grandfather. Even before she moved the house there, after she and Clifton broke up, my mother and I moved into my [grand]father's house, but my brother initially stayed in Sion Hill. [Verbatim]

16. So initially my mother stayed in her father's house a few years, and eventually her brother Alvin put up the wooden house in Beachmont.

17. Once the board house went up, and my grandfather died, my mother, my brother and I lived in the board house."

[31] However the court takes note that in cross examination she admitted that in fact although her allegation was that her grandfather had made the promise to her mother during his lifetime, her mother did not move the house there until after his death. This witness also said on cross examination that during the lifetime of her grandfather it was he who pointed out to her mother where she could build her foundation and she did so on that indication.

[32] Mrs. Miller's brother Winston Ottley added very little to this evidence. At paragraphs 11 and 12 of his witness statement, it was clear that any the information he spoke of, he had obtained from his mother:

"11. Percy Jones, my mother's father, gave her permission to put the house there. She put a concrete foundation there first with help from Clint Cupid and his friends. When the concrete foundation was built,

Percy was still alive. The wood house was placed partly on the concrete foundation and party [sic] on dirt. I believe there was some lag time between when the foundation was built and when the board house was placed there.

12. *Our mother told us her father gave her the land for she and her children."*

In cross examination he made it clear that he had no personal knowledge of the circumstances as to how his mother moved the house to his grandfather's land but he also admitted that she did move the house there after his death.

[33] In contradistinction, the defendants by their pleadings have denied that it was the father of the claimant who placed her on the land but rather the siblings of the claimant who brought her there "during her time of need"¹¹.

[34] In spite of this contention by the defendants and the nature of the cross examination undertaken on behalf of the defendants, this court does not believe the version of events as relied upon by the defendants. In fact if this court were to accept that it was the siblings and not the deceased who placed the claimant on the said parcel of land, it would make a mockery of the evidence that remained uncontroverted, that the deceased was the one to show the claimant where to build and was alive at the time of the building of the concrete foundation that exists there to this day. There was in fact no suggestion in cross examination that it was the defendants who were responsible for the construction of this foundation. Indeed, this is a fundamental fact to which the defendants have failed to answer in their pleadings. Rather the contention that was made was that despite the existence of the concrete platform, the claimant has sought to place the concrete structure outside of the parameters of the platform and therefore occupies more land than she is in fact entitled. It does not therefore address the existence of the same. I therefore accept on a balance of probabilities that the proposition of the claimant in this regard remains unshaken and I accept that the deceased during his lifetime made the indication to the claimant that she could build on the land and acting on that indication that she built the concrete foundation during his lifetime. However, I must consider whether this "*representation or promise ...to found an estoppel [was] ... clear and unambiguous.*"¹²

[35] In the case of **Elaine Knowles v George Knowles as Executor and Beneficiary of the Estate of Oliver Knowles, deceased**¹³, the Board in considering whether estoppel arose as between the parties when the husband of the claimant and the claimant were invited to live on the property belonging to the estate of the father by the mother of the defendant and the husband of the claimant, intimated that there was a fundamental difference between active encouragement and acquiescence to a state of affairs. In the Board's mind in that case it was merely a case of acquiescence on the part of the defendant to his brother's occupation and not active encouragement.

[36] In the case at bar, I find that the report of the actions of the deceased which remain uncontroverted were more than merely acquiescing to the claimant coming onto the land. I accept that there was active encouragement and accept that it was the deceased who identified the area in which she was to build and knew she had commenced to do so with the construction of the foundation previous to his death.

[37] I therefore find that she has fulfilled the first requirement.

¹¹ Defence filed 31/8/17 paragraph 1439

¹² **E & L Berg Homes Ltd v Grey and anr** [1980] 1EGLR 103

¹³ Privy Council Appeal No 28 of 2007

The Reliance

- [38] The claimant also has to show that based on the promise or assurance, she relied on the same and took steps to act on the said promise.
- [39] The submission of the defendants is that the reliance by the claimant did not take place until after the death of the deceased and as such he would not have known of her action to allow her to rely on the equitable relief.
- [40] The defendants did not refer this court to an authority to substantiate this point. However, this court having found that there was indeed an assurance on the part of the deceased to the claimant, I also accept that the claimant acted on that assurance, relied on the same and took action to do so. The claimant believed that the deceased had given her the lot of land upon which she placed the concrete foundation, during the lifetime of the deceased. Did the claimant therefore rely on the assurance? I answer that question in the affirmative. This court must however take note of the learning of the Privy Council in the case of **Henry and anr v Henry**¹⁴ in which they clearly stated that reliance cannot be separated from the question and inquiry with regard to detriment and thus in the equity of proprietary estoppel the two are often intertwined. I therefore accept that in looking at the question of reliance there must also be a close investigation as to whether there was detriment suffered by the person seeking to rely on the equitable intervention.

Detriment

- [41] In the case law, it is this element more than any other that underlies the basis for the equity to be imposed. *"The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round."*¹⁵
- [42] That being said, it is clear, that there is no yard stick as to how much detriment is "sufficient detriment". What must be proven is that the person claiming the benefits of the equity, must have incurred some expenditure or otherwise prejudiced himself or acted to his detriment¹⁶. The court must therefore be satisfied that it was the assurance or the representation that **led** to the other party suffering the detriment¹⁷.
- [43] Thus where the claim is against an estate of a deceased, the court also recognized that the items of detriment should be specifically alleged and proved. Indeed *"the court should not...readily infer detriment which has not been specifically alleged and proved."*¹⁸ In this court's mind this is entirely a sensible approach when one considers that this equity resides in a *"restricted jurisdiction and is one which should ...be exercised with due caution."*¹⁹ As is usually the case, the only persons who are present during the assurance being made are the deceased and the person so claiming, it is therefore clear that the items of detriment relied upon must be specifically stated and pleaded.
- [44] With that being said, it was apparent from the case of the claimant that the paragraphs of the pleadings that dealt with detriment were far from specific but rather vague and nebulous. Thus, paragraphs 6 and 11 of the Statement of Claim are the only times that the question of detriment is addressed by reference being made to the construction of a concrete structure by the claimant. Thus at paragraph 6 it was pleaded,

¹⁴ (2010) 75 WIR 254

¹⁵ **Henry and anr v Henry** Op Cit at paragraph 37

¹⁶ **Greasley v Cook** [1980]1 WLR 1306 at 1313-1314 per Dunn LJ

¹⁷ **Jones v Watkins and ors** 26/11/87 CA UK (unreported)

¹⁸ **Jones v Watkins and ors** Op Cit per Slade LJ

¹⁹ **E & L Berg Homes Ltd v Grey** Op Cit per Omrod LJ

"6. The Claimant lives in a permanent (concrete) structure on part of the said land (hereinafter called the Claimant's land). She has lived there for the past 30 or so years.

And then at paragraph 11,

11. The Claimant has been living in the aforementioned parcel for the past 30 or so years as aforesaid. The claimant moved onto the land with the clear and express permission to build and live there by the Deceased."

[45] The evidence of the witnesses for the claimant was only slightly more informative.

[46] Mrs. Ottley-Miller had this to say in her witness summary²⁰:

"15. After she got the permission, my mother then placed a board house, not on the concrete structure, but close thereto. This house was separate and distinct from the nearby house and home of the said Percy Cornelius Jones. Over the years, the latter house fell into disrepair even though another sibling, Paul, continued to live in it. This house was sold, as far as I can remember, to an outside party (one 'Bronte') for about \$600.00 in or about 2015 or 2016.

17. Over the years the house that my mother built evolved from a board house to a 'wall' house. During Hurricane Ivan the roof was destroyed and she received building materials like cement, nails, and rafters to conduct repairs from various sources.

18. Further, I obtained a loan which was spent on the house.

19. Also, my mother obtained "blocks" from Crosby, a neighbour who made and sold blocks, and the house has been, for many years now, a permanent structure.

20. So my mother, at all material times, was encouraged and induced, first by her father and then by her siblings, to expect an interest in the subject land. [Verbatim]

21. She acted on these promises and inducements.

Improvements

19. I contributed to the construction. I borrowed three small loans of \$500.00, \$800.00 and \$500.00 from the Kingstown Co-operative Credit Union. I was working at the Y.W.C.A. Daycare at the time."

[47] On cross examination she remained unshaken as to the persons responsible for the construction of the house. In having heard this evidence, this court accepts on a balance of probabilities that there is evidence that expenditure was undertaken on behalf of the claimant by her children. However, there was an admission grudgingly though it was, that the siblings of the claimant also assisted in the construction, minimal though it may have been.

[48] In the submissions made on behalf of the claimant, it was argued on behalf of the claimant, the detriment suffered by the claimant was in the considerable amount of work undertaken on behalf of the claimant in first erecting the wooden house and then improving and upgrading it to a concrete house.

[49] Be that as it may, and as much as this court accepts that there was a financial undertaking on behalf of the claimant to place this house on the land of the deceased, this court accepts that it was remiss of the

²⁰ Trial Bundle filed on 24/6/19 at page 73

claimant in assessing that detriment in failing to present any evidence of the benefits that the claimant also enjoyed as a result of occupying this land. The defendants in their submissions identified those benefits as obtaining help from her siblings to move the house to the parcel of land, living there rent free, obtaining assistance in building the concrete house and also the continued benefit of financial support from her siblings as she lives on the land.

- [50] In the case of **Henry and anr v Henry**²¹ the Privy Council made it clear that to determine whether a party relying on this equitable relief has shown detriment, the court is required to compare any advantages a party may have received to any detriment that they allege they have suffered. It is when this exercise is conducted that it can then be considered whether the requirement of detriment is met.
- [51] In the case at bar, this court finds that the advantages enjoyed by the claimant were i) she was able to live on the property rent free (however she would have been entitled to a share of the property in any event as a beneficiary under her father's estate); ii) that she was able to build a concrete house with the assistance of her children and the limited contributions of her siblings without the need to pay a mortgage for the land itself iii) she was able to make a home for herself and her children for the last 30 years; iv) that she did not have to locate a place to live at the end of her relationship for which she would have had to rent or buy.
- [52] The acts of detriment that I found were: i) monies were borrowed on her account towards the conversion of the home; ii) had to source materials to rebuild the home after the passage of a Hurricane; iii) after break down of her relationship she moved the wooden house to the land (however the court accepts that this was done with the assistance of one of her siblings); and iv) that she purchased materials and paid for labour.
- [53] The question at this stage for the court therefore is not whether the detriment was substantial but that it was more than just trivial²² together with the consideration as to whether it would be unconscionable for the person giving the assurance or those acting on his behalf to retract on the assurance.
- [54] In assessing the benefits which the claimant obtained as against what she claimed were her detriment, I am not satisfied that the claimant in this case has suffered such detriment. There was no evidence to indicate that the acts that were carried out by the claimant put her to such a disadvantage that she "...effectively had deprived [her]self of a better life elsewhere"²³. Indeed as the case of **Knowles v Knowles**²⁴ made clear, "*While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalize those who through acts of kindness simply allow other members of their family to inhabit their property rent free.*"
- [55] In this case at bar, I accept that the deceased did present his daughter the claimant an opportunity to come live on his land. It was clear that at that time the claimant was subject to domestic discord with her partner. In this court's mind it is entirely feasible that this is what led to the deceased's offer. By doing so, the deceased's actions would not have been in opposition to his rights as the court accepts that he would have been aware that the claimant would have been entitled to a portion of this land on his death. Therefore I do not accept that the assurance and the encouragement by the deceased could be seen as having been inconsistent with his rights to the land²⁵. Indeed I also do not accept that the deceased would have known that the actions of the claimant were in conflict with his rights to the land and the claimant has brought no evidence to establish that at all. On the balance of probabilities, I therefore find that the claimant has not established her case to the declarations as sought by virtue of the doctrine of proprietary estoppel.

²¹ Op Cit

²² **Jones v Watkins and ors** Op Cit

²³ **Henry and anr v Henry** Op Cit at paragraph 61

²⁴ Op Cit at paragraph 27

²⁵ **Wilmot v Barber** Op cit

[56] The claimant sought no relief with regard to the estate of her father but this court notes that it goes without saying, that the claimant would however be entitled to her share of the estate of her father pursuant to the provisions of the laws of intestacy in this state and the court strongly recommends that the duly constituted Personal Representative of the estate of the deceased is to ensure she receives that share. It is in this regard that this court therefore is satisfied that in these circumstances it would not be unconscionable for the estate to enforce its rights.

Order of the court is therefore as follows:

1. The declaration that the claimant is entitled to the parcel of land set out in Survey Plan G60/102 or alternatively to a declaration that the claimant is entitled to the parcel of land she presently occupies is denied.
2. Costs to the defendants on an un-valued claim in the sum of \$7,500.00 pursuant to Part 65.3 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar