

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
ANGUILLA CURCUIT
(CIVIL)
2016**

**CLAIM NOS. AXAHCV 2010/0069; 2010/0070; 2010/0071; 2010/0072;
2010/0073; 2010/0076; 2010/0077; 2010/0078; 2010/0079;
2010/0081; 2011/0051; 2011/0052**

IN THE MATTER OF the Registered Land Act,
Revised Statutes of Anguilla Chapter R 30
Section 147

AND

IN THE MATTER OF Appeals by Collins Richardson, Carolyn Richardson (Administrator of the Estate of John Samuel Richardson; Boswell Richardson; Calvin Richardson; Leslie Richardson (Administrator of the Estate of Alma Richardson; Marge Hughes (Administrator of the Estate of Evangeline Hughes; Estell Hughes Administrator of the Estate of Samuel Benjamin Richardson; Calvin Richardson (Administrator of the Estate of Victor Richardson; Robert Austin Richardson (Administrator of the Estate of Eneria Richardson; Royston Richardson (Administrator of the Estate of James Richardson; Oliver Macdonna (Administrator of the Estate of Jane Rebecca Richardson; Sybil Rhymer (Administrator of the Estate of Florence Richardson; against a decision of the Registrar of Lands dated 28th September 2010 and 7th July 2011

Consolidated to be tried together by Order of this Honourable Court on the
18th May 2011, 26th October 2011 and 25th July 2012

Appearances:

Mr. Clyde Williams and Ms. Ayana Tyrell for the claimants/appellants;
Mrs. Joyce Kentish-Egan and Mr. Kerith Kentish for respondents nos. 1-5: Benjamin W Richardson (Administrator of the estate of John Richards Richardson); Global Investment (Anguilla) Ltd; Robert Considine & Anne Considine; Benjamin Wilson Richardson; Leonard Bennett (Administrator of the estate of Athelson Richardson) and James Webster and Cleopatra J. Webster
Mr. John Wigley for respondent no.7
Mr. Rupert Jones - the Honourable Attorney General and Mr. Ivor Greene for the Honourable Attorney General, Registrar of Lands and the Director of Lands and Surveys

2015: January 19th, 20th, 21st, 22nd, 23rd,
26th, 27th, 28th, 29th and 30th January
2016: January 21st

JUDGMENT

Introduction

- [1] **COMBIE MARTYR, J. (Ag.):** The appellants and the 1st respondent are the descendants of the late Abraham Richardson and Ann Richardson¹. The court gratefully adopts some of the legal history of the 'Long Bay Estate dispute' as traced by the Registrar of Lands in the decision of 28th September 2010 and also from the legal submissions of counsel which chronicled the historical detail of this dispute. The court will nonetheless present a brief summary of the background facts for the purposes of this decision.

Background Facts

- [2] The appeals before this court have their origin in a dispute during the cadastral hearings on or about 1975, which arose between Alfred Richardson on behalf of the eight (8) heirs of Abraham Richardson and Benjamin Wilson Richardson on behalf of his grandfather John Richards Richardson. The dispute relates to the ownership of lands situate at Long Bay Estate, formerly registered as Registration Section West End Block 18011 B Parcel 1 and now after several mutations comprise: **Block 18111 B 28, 29, 30,31, 32, 33, 39, 40,43 & 44 and Block 18011 B 199 & 200** (hereinafter called **Parcel 1**).
- [3] The dispute was referred to the Adjudication Officer and pursuant to the provisions of the Land Adjudication Ordinance 1974², the land was awarded to

¹ Family Tree C8

² Sections 15 and 20

the eight (8) heirs Abraham Richardson who were registered as proprietors of Parcel 1 on the basis of their rights as beneficiaries entitled under the Last Will and Testament of their father Abraham Richardson who purchased by Deed of Sale registered as No. 932/1885.

- [4] Section 24 of the Land Adjudication Ordinance 1974 as amended ³, provides for an appeal from the decision of the Adjudication Officer to be made to the High Court which appeal was duly filed by the 1st respondent in claim No. 21 of 1977 ⁴.

- [5] On appeal to the High Court, the 1st respondent Benjamin Wilson Richardson was successful in satisfying the learned trial Judge, Justice Monica Joseph (Joseph J. as she then was) of the entitlement of his grandfather John Richards Richardson (one of the eight (8) heirs) to Parcel 1, by virtue of a Deed of Sale to John Richards Richardson registered as No. 967 of 1890.

By a Judgment delivered by Joseph J. on 12th May 1985 it was ordered as follows:

"I allow the appeal and order that the eastern portion of Long Bay Estate, with the exception of the areas of the estate that were the subject of the consent order made on April 25th 1983, vest in the personal representative of the estate of John Richards Richardson." (the 1985 Order of Joseph J).

- [6] The appellants were unsuccessful in their appeal to the Court of Appeal against the 1985 Order of Joseph J. ⁵ and by Judgment delivered on the 8th July 1987, the 1985 Order of Joseph J was affirmed. There has been no appeal against the Judgment of the Court of Appeal and other attempts to pursue the matter further have been unsuccessful⁶.

Preliminary issues

- [7] The two (2) orders made by Joseph J. prior to the delivery of the 1985 Order of Joseph J, must be addressed by this court in order to bring proper perspective to these appeals.

The order made on the 9th July 1982 states as follows: "Upon hearing counsel for both parties and the Registrar of Lands having been asked to perform certain functions in relation to the west end section Block 18111B parcel 1, it is ordered that the Registrar of Lands be requested to draw a detailed map

³ Land Adjudication (Amendment) Ordinance 1977

⁴ Wilson Richardson v Alfred Richardson

⁵ Civil Appeal No. 3 of 1985

⁶ Civil Appeal No. 4 of 1992: Amos Richardson (Personal Representative of Sara Elizabeth Richardson) et al v Benjamin Richardson (Personal Representative of John Richards Richardson); Civil Suit No. 49 of 1990: Amos Richardson (Personal Representative of Sara Elizabeth Richardson) et al v Benjamin Richardson (Personal Representative of John Richards Richardson)

showing houses and cultivation on the remaining portion of Parcel 1" (the 1982 Order).

The consent order made on April 25th 1983 referred to in the 1985 Order of Joseph J. states as follows: " Upon hearing counsel for both parties and by **consent** it is ordered that the Registrar of Lands in respect to Block 18111B Parcel 1 under Section 135 of the Registered Land Ordinance 1974, receive applications for ownership of land with absolute title **as per the list attached to the plan** and filed on the 25th April 1983 in suit 21 of 1977" (the 1983 Consent Order).

- [8] It certainly would have been in the contemplation of the court that these applications to the Registrar of Lands for ownership of portions of Parcel 1 would have been made within a reasonable time of the making of the 1983 consent order, or even following the Court of Appeal decision in 1987. However the appellants or their predecessors failed to make their applications until 2010 and 2011.
- [9] The court considers that the list of thirty persons attached to the plan pursuant to the 1982 Order, establishes that in 1983, the named thirty persons were in physical occupation by way of houses built which were identified on Exhibit C4 (C4) consistent with the location of the thirty house lots on the list attached to C4. As such this court concludes that these thirty persons *established a right for each of them to be entitled to apply for a declaration of title to be made in their favour in respect of their individual claims.*
- [10] By consent order of the parties dated 4th March 2010 to which is attached a copy of the same list of thirty persons pursuant to the 1985 Order of Joseph J. as per Appendix A attached (*the 2010 Consent Order*), the parties agreed to the appointment of Cleveland Richards Licensed Land Surveyor for the purpose of obtaining a brief description of claims and to identify, mark, survey, record and present a survey plan of approximate areas of **occupation and/or cultivation** claimed by persons (heirs, successors and assigns) listed in *the 1983 Consent Order*, as well as to note objections to the areas claimed.
- [11] The listed persons were to utilize the Cleveland Richards plan and report in support of applications to the Registrar of Lands under Section 135 now Section 141 of the Registered Land Act Revised Statutes of Anguilla Chapter R 30, in order to obtain title by prescription pursuant to the Orders of Joseph J. - *the 1982 Order and the 1983 Consent Order.*
- [12] The current claims are brought by way of appeals against the decisions of the Registrar of Lands dated 28th September 2010 and 7th July 2011, in which the appellants were unsuccessful in their applications to the Registrar to be registered as proprietors by Prescription in respect to portions of Parcel 1 as set out in the plan of Cleveland Richards Licensed Land Surveyor as Plan Ref. Rads

12/10 and report dated 8th April 2010 (**Rads**) which plan was used extensively during the trial in respect of the claims.

[13] CPR 2000 Part 60 and in particular CPR 60.8 governs appeals to the High Court and provides that the hearing of such appeals is by way of rehearing and the correct procedure to be followed in such appeals, is as set out by the Court of Appeal in the case of *Oliver Macdonna (Administrator of the estate of Jane Rebecca Richardson) v Benjamin W. Richardson* ⁷ .

[14] This case establishes that the court has the power to hear matters afresh, can receive evidence adduced in the court or tribunal below, may draw inferences that ought to have been drawn in earlier proceedings and can hear the matter as if it had not been heard previously, having regard to the decision made and evidence adduced in the court or tribunal below. In short, this court must allow for further evidence to be called and for the matters to be heard afresh rather than classically reviewing it as a Court of Appeal would.

Grounds of Appeal

[15] The grounds of appeal as contained in the statements of claim and re- amended statements of claim can essentially be summarized as follows:- The Registrar of Lands:

- misunderstood and misapplied the provisions of Sections 135 and 136 of the Registered Land Act;
- erred in applying the test for determining (i) factual possession, (ii) degree of physical control necessary (in some cases by using the cultivation test) and (iii) the requisite intention to ground a claim for title by prescription;
- erred in her application of the principles to and in her assessment of (i) the evidence, (ii) the weight to be given and (iii) failed to give sufficient weight to each appellant's evidence;
- erred in assessing the weight of the evidence;
- erred in the determination of the relevant time period in which to look for physical possession;
- erroneously limited the period for physical acts of possession to 1971-1983;
- failed to draw a distinction between an intention to own or acquire ownership and an intention to possess for the time being land to the exclusion of all others except joint possessors;
- failed to appreciate the concept of joint possessors, customs and tradition of Anguillan families and as a consequence erred in finding that the appellants did not establish possession and the requisite intention to possess;

⁷ Civil Appeal No. 0001 of 2012/Claim No. 2011/0051

- failed to recognize that in a prescription claim there can exist a single possession exercised by or on behalf of several persons jointly;
- considered facts and evidence after 1983 which were immaterial and irrelevant to determining the requisite intention;
- failed to distinguish between matters which are material and relevant and those which are not and properly assessed the weight of the evidence;
- failed to consider that there was no interruption or challenge to the appellant's possession;

[16] The appellants pray that the Registrar's Order or decision be set aside and that the appellants' claims for title by prescription be granted.

[17] The respondents essentially denied all the matters alleged in paragraph 15 hereof and in summary, the defence encompassed the following:

- that the Registrar clearly and correctly stated, analyzed and applied the legal principles required to prove a claim for prescription;
- clearly and correctly stated and applied the test for determining factual possession and for the requisite intention to successfully ground a claim for title by prescription;
- the Registrar of Lands examined in detail the evidence adduced by the appellants to support the claims and distinguished correctly between matters which are material and relevant and those which are not;

[18] The court however considers it relevant to the determination of these appeals to address the following issue:

- Whether C4 is in fact ***the detailed map showing houses and cultivation on the remaining portion of Parcel 1***, which the Registrar of Lands was required to prepare in compliance with the 1982 Order and what weight if any is to be given to it.

[19] The appellants are not convinced of the authenticity of C4 and have contended that to their knowledge the 1982 order has not been complied with and that the detailed map was not produced and if so produced, it was without their input. Accordingly, could not be representative of the areas that were being cultivated over the years. The appellants further contend that none of them were invited by the office of the Registrar of Lands to a site visit to point out their areas of cultivation and urge the court to give little or no weight to C4. Support for this view the appellants contend, can be found in the evidence of Benjamin W. Richardson (**Benjamin**) and Cecil Niles.

[20] The court has reviewed all the evidence before it which relate to C4 and has considered excerpts from the summary of the evidence and in particular the evidence of Oliver MacDonna (MacDonna) Hubert Hughes (Hughes) John Samuel Richardson, Collins Richardson, Director of Lands and Surveys Mr.

Leslie Hodge (Hodge) and Cecil Niles Licensed Land Surveyor and former Registrar of Lands (Niles) to assist the court in determining this issue.

- [21] Benjamin was shown Exhibit C7 and asked questions in cross examination by counsel for the appellants in respect to C7. Benjamin admitted that he recognized C7 as representing the estate of John Richardson and identified the portions in red as house lots which he did not claim. Benjamin stated that it is his understanding that this map (C7) (court's emphasis) was drawn in compliance with the 1983 consent order. Further questions from counsel for the appellants were in regard to an invitation by the Registrar to a site visit after 1982 with respect to areas of cultivation for Victor Richardson's claim or the estate to which Benjamin answered he was not so invited.
- [22] The cross examination became confusing because counsel thereafter referred to the consent order of 1983 and then withdrew the question and continued with the order of 1982. The court must admit that it never understood that the questions thereafter did not relate to C7 as counsel had not indicated that he was no longer dealing with C7 and furthermore the court did not consider the questions unrelated as counsel had not asked any questions of Benjamin relating to an invitation to a site visit in respect to C7.
- [23] The evidence of Benjamin on cross examination by counsel for the appellants in respect to the plan ordered by the court in that regard, was somewhat more confusing, as the court had not understood that counsel's questions to Benjamin regarding an invitation to the site in preparation of 'that' map or of being invited by the Registrar's office or ever seeing such a map to which he responded 'yes he had seen it by the Registrar' was in respect to C4. In fact the court was then of the view that it could only have been in respect to C7 because at that time C7 was believed to be 'that' map. The court is also reminded of preliminary issues raised by counsel before the court regarding C7 and C4 (see pages 37 and 66 et seq of transcript).
- [24] Niles to whom the 1982 order was directed, in his evidence in suit 21 of 1977 on 26th November 1984 stated that C7 was prepared by the department following the court order dated 25th April 1983 is consistent with the evidence of Benjamin. However Niles stated that he has not seen the court order dated 9th July 1982. The court does not consider that to be fatal in terms of the weight to be given to C4 as there is no evidence before this court that C4 was ever shown to Niles. Certainly the court would disregard C4 altogether if C4 was shown to Niles and he was unable to identify it.
- [25] As a consequence, the court accepts that there was genuine misunderstanding regarding C4 and C7 and does not construe Benjamin's answers regarding an invitation by the Registrar to a site visit to Parcel 1 in preparation of the plan/map ordered in 1982 as being inconsistent or Niles answer that he had not seen the

court order dated 9th July 1982, as being sufficient to affect the weight to be given to C4.

- [26] The 1983 consent order referred specifically to a list attached to a plan and filed on 25th April 1983 in suit 21 of 1977. The exhibit C4 comprised a list of thirty (30) persons signed and dated by Joseph J. and also signed by counsel for the parties on the 25th April 1983 with an annotation on the list- 'see attached plan' and to which a plan on the 1978 edition of the official map series was attached. The court also observed that there is no other map that was filed in suit 21 of 1977 and as an exhibit in Civil Appeal No. 3 of 1985 which conforms in terms of the detail ordered by the 1982 order.
- [27] C4 is clearly a detailed map or plan of the Long Bay Estate (LBE) which shows houses and areas of cultivation in accordance with the order and the court finds it difficult to accept that Joseph J. would make such an order without ensuring that a plan is attached and is in compliance with the order.
- [28] The court has noted the question regarding authenticity of the plan and the objections raised by counsel for the appellants regarding inter alia the lack of indications, markings, dates and signatures of the maker of the plan and that the appellants were not invited to a site visit to point out their areas of cultivation. That notwithstanding, there is no evidence before this court that the appellants were invited to a site visit to point out the location of their *houses*, yet the appellants' evidence is that C4 correctly reflects the position of the houses which is confirmed by C7. Further, the court is of the view that the absence of the appellants when the exercise was conducted would not prejudice the mapping of *existing* areas of cultivation as it did not affect the mapping exercise in relation to houses.
- [29] Oliver MacDonna in his evidence when shown C4 confirmed that C4 showed marks indicating structures or houses on Parcel 1 and showed four areas of cultivation although his cultivation is not shown. C4 he agreed referred to a detailed map of houses and cultivation and accepted that in his cross examination he had undergone an exercise of looking at a detailed map C4 that showed *houses and cultivation*.
- [30] Hubert Hughes (Hughes) accepted that the exhibits C1 -C11 were the documents admitted by consent in the proceedings suit 21 of 1977 before Joseph J. which he conducted as representing the heirs of Abraham Richardson on 23rd November 1984 and in particular there were included in the exhibits **C4 and C7**. Hughes accepted that he would have seen the exhibits before admission into evidence by his consent. The court can only conclude that the C4 plan must have been prepared between July 1982 and April 1983 and certainly before it was admitted with the consent of Hughes in November 1984.

- [31] Hughes on cross examination agreed that C4 which identified the Long Bay Road as a feature dividing Parcel 1 into a north side and a south side and also identified on C4, the location of the houses of the thirty (30) persons and the four (4) areas of cultivation which is in compliance with the 1982 order.
- [32] The Director of Lands and Surveys- Leslie Hodge the court's expert, in reviewing the topographical maps for 1968, 1978 and 1984 -C5 (a) - (c) observed areas which were identified on the key/legend as 'vegetation boundary'. The court observed that in some cases for example in an area on the west of the Seventh Day Adventist Church and in the area in Collins Richardson's 8E claim on Rads, the 'vegetation boundary' shown on the C5 plans coincides approximately with areas on C4 that represent areas of cultivation. A prudent court must of necessity give weight to that observation and therefore if there is no corresponding corroborative cultivation, the court cannot accept any vegetation boundary that is not so corroborated.
- [33] The court has reviewed the aerial photographs for 1968, 1975 and 1991 and the corresponding topographic plans and in particular the topographic plan of cadastral survey year 1975 referred to by Hughes in his evidence which he described as showing '*large tracts of cultivation*'. The court notes that there is not even a symbol for 'cultivation' in the legends for the years 1968, 1975 and 1982 topographic plans and in particular the year 1975, far less the 'large tracts of cultivation' allegedly seen by Hughes. The evidence of vegetation boundary seen in certain areas may well be indicative of pockets of small areas of cultivation grown in the curtilage of the houses as described by the appellants and Benjamin.
- [34] The evidence of Collins Richardson (Collins) and John Samuel Richardson (Sam) give a possible explanation for the absence of a symbol for cultivation as an indication that not much cultivation was done in 1975. Collins in his evidence in support of the claim by Sam stated that '*by 1975 there was not much cultivation because of drought, that the people who used to cultivate the land they got older and died out...*' Collins further stated that '*most of parcel 1 was lying there empty growing bush*'. Sam himself in his evidence before the Cadastral in 1975 admitted that '*under the hill used to be arable but due to drought it is now pasture*'.
- [35] A composite plan showing Rads over laid on C4 as aforementioned C6 (a) and composite plan showing Rads over laid on C7- C6 (b), represent spatial corroboration of the evidence of Collins regarding cultivation in two (2) of the areas of his claims 8 B and 8E.
- [36] Hodge's evidence that to prepare a plan similar to C4, would require parties going on a site visit and taking notes of general observation and on preparation of plan he would ensure that the information annotated on the plan is signed and dated especially in a case where an old base plan is used. Counsel for the

appellants sought to reinforce the position that little or no weight should be given to C4 on the basis that the proper procedure was not followed. Hodge however conceded on cross examination by counsel for respondents 1-5, that he could not speak to the policies and procedure that obtained by the Department of Lands and Surveys in 1982 or when C4 would have been drawn.

[37] After much consideration, the position of this court is that it has no difficulty in accepting **C4** as the plan prepared by the Registrar of Lands pursuant to the 1982 Order. The court will treat C4 as being of historical significance in so far as it indicates what existed on ground at the time of the making of *the 1983 Consent Order*. Its relevance to this court in these proceedings would be in terms of spatial corroboration of the evidence of the appellants of their areas of cultivation that existed before 1983 and areas of cultivation that may still continue to exist within the portions claimed by them in 2010 and 2015.

[38] The court is of the view that if little or no weight is given to C4, in effect the court is being asked to make a decision on Rads prepared in 2010 and the evidence of witnesses only, of what took place in the past. To do so would deprive the appellants of an opportunity to rely on corroboratory evidence or what may well be the best evidence in support of the appellants' claims.

Issue for determination by the court

[39] The issue for determination by the Court is *whether the appellants acquired ownership to portions of Parcel 1 by their peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of 12 years, within the requirements of Section 141 of the Registered Land Act.*⁸

[40] Of critical importance to this determination is the question of the 'relevant date' or the period of 12 years within which possession by the appellants is to be considered. Evidence before the court in that regard is expressed as follows: "*I am making this application on behalf of myself as I could have done on 25th April 1983, this being the relevant date*". The court is of the view that had these applications been made between the years 1983 -1987, the thirty (30) listed persons having already satisfied the court in claim No. 21 of 1977 in 1983, that they were at least in **occupation** of houses built on portions of Parcel 1, it would be for the appellants to establish possession for a period of 12 years before 1983/1987, that period being the 'relevant date' for applications if made at that time.

[41] In oral submissions before the court at the commencement of trial, counsel for respondents 1-5 sought to persuade the court of the importance of conducting a

⁸ Section 135 of the Registered Land Act Revised Statutes of Anguilla Chapter R 30

site visit. Counsel argued that in light of the Registrar's decision to restrict the 12 years to that period immediately preceding the 1983 consent order, it would be imperative that the court make a site visit.

[42] In so doing the court could visually appreciate the state of the property as it currently physically exists especially as some of the appellants claim that acts of possession in terms of cultivation and occupation continue to present time and their claims ought not be limited to what obtained in the past. Counsel for the appellants agreed that one of the facts in issue related to the question of actual cultivation of certain parts of Parcel 1 and was of the view that a site visit may assist the court in resolving that issue on a balance of probabilities.

[43] Two of the grounds of appeal before this court is that the Registrar of Lands erroneously limited the period for physical acts of possession to the years 1971-1983 and erred in applying the test for determining factual possession, degree of physical control necessary (in some cases by using the cultivation test) and the requisite intention to ground a claim for title by prescription.

[44] Having considered the arguments by counsel on this point, this court takes the position that to invite the court in current proceedings to determine possession necessary for prescription retrospectively, with reliance on evidence of persons for a period of time in the past (prior to 1983) of past physical acts of factual possession by way of cultivation, is asking the court to engage in a mental gymnastic that is impossible to determine definitively and is speculative at best.

[45] However it is this court's considered opinion that the appellants can be successful on the claims if the appellants can show a continued presence by way of cultivation of the land and other physical acts which would constitute the possession necessary to establish factual possession and the requisite intention to possess the lands being claimed. Alternatively in the absence of actual cultivation, that they can satisfy this court that they maintained effective single and exclusive control and occupation sufficient to establish the necessary factual possession and requisite intention to possess the lands being claimed.

[46] The court therefore takes the view that it ought not to restrict itself to the period 1971-1983. The court considers that *the 2010 Consent Order* changes in a material way what would constitute the 'relevant date' or the period within which the 12 years necessary for the appellants to establish possession in order to prescribe. Paragraphs (a) and (f) of *the 2010 Consent Order* read as follows:

(a) *To appoint by mutual instruction Mr. Cleveland Richards, Licensed Land Surveyor to enter upon the lands contained in parcels 28, 29, 30, 39, 40 & 44 of 18111 B and lands contained in parcels 199 & 200 of 18011 B for the purpose of recording the evidence of persons listed in the Consent Order dated April 25th 1983, their heirs successors and assigns, to support an application by them under section 135 of the Registered Land Act for title by*

prescription pursuant to the consent orders of Madame Justice Monica Joseph dated July 9th 1982 and April 25th 1983 respectively and made in suit 21 of 1977 (said list is attached as appendix A).

(f) The listed persons will file their claims pursuant to section 135 of the Registered Land Act with the Registrar of Lands on or before 30th April 2010.

[47] This Court does not attribute paragraph (a) of *the 2010 consent order* as fixing the relevant date as 25th April 1983, but merely to prescribe the acts that were to be done in 1983 as the same acts to be done in 2010, that is to say: to draw a detailed map/plan showing houses and cultivation/occupation and for the Registrar of Lands to receive applications for ownership of land with absolute title by prescription.

[48] Based on the aforementioned and in particular *the 2010 consent order* and CPR 60.8, this court considers that in order for the appellants to establish their claims for title by prescription filed in 2010 and 2011, *the appellants must satisfy this court that they personally or in the capacity as heirs successors or assigns of the listed persons have been in peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of 12 years during the years 1940 - 2015.*

The Law

Acquisition of land by prescription

[49] ***The Registered Land Act -Section 135 provides that:***

(1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of 12 years, but no person shall so acquire the ownership of crown land.

(2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor thereof.

[50] *The interpretation of the principles relating to these statutory provisions has now been settled. What constitutes 'possession' as defined by Slade J in the case of **Powell v McFarlane (1977) 38 P & CR 452** had been adopted by Lord Browne-Wilkinson in the House of Lords case of **J A Pye (Oxford) Ltd & Ors v Graham and Another [2002] UKHL 30** and subsequently approved by the Court of Appeal in **Buckinghamshire County Council v Moran [1990] Ch 623** and continue to be restated in several cases in our courts⁹ as follows:*

⁹ Jeffrey Adolphus Carty v Raphael Edwards- Claim No. AXAHCv 2003/0045; Lucien Callwood et al v The Registrar of Lands and Sheila Callwood Schultenbrandt- Clam No. BVIHCV 2008/0142;

At paragraph 40 of his opinion Lord Browne-Wilkinson states: "If the law is to attribute possession of land to a person who can establish no paper possession, he must be shown to have both **factual possession** and **the requisite intention to possess** (*animus possidendi*)":

[51] Lord Browne-Wilkinson explained further, the two elements necessary for establishing legal possession:

- a sufficient degree of physical custody and control (actual possession);
- an intention to exercise such custody on one's own behalf and for one's own benefit -intention to possess.... such an intention may be and frequently is deduced from the physical acts themselves (*animus possidendi*)".

[52] **Of Factual Possession** Lord Browne-Wilkinson at paragraph 41 of his opinion continues to cite with approval Slade J. in Powell at pp 470-471 by restating:

"Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. ... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[53] **Of Intention to possess**, Lord Browne-Wilkinson at paragraph 42 of his opinion adopted the requirement of Slade J. as follows: "intention in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow".

[54] Hoffmann J. in the Moran's Case at page 238 of his judgment stated:" What is required for this purpose is not an intention to own or even an intention to acquire ownership, but an intention to possess for the time being, the land to the exclusion of all other persons including the owner with the paper title".

[55] Slade J. in Powell stated "The courts will in my judgment require clear and affirmative evidence that the trespasser claiming that he has acquired possession, not only had the requisite intention to possess, but made such an intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly clear to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will

treat him as not having the requisite animus possidendi and consequently as not having dispossessed the owner".

[56] The Courts have treated cultivation of land as amounting to possession, provided that there is clear boundary marking out the extent of the land cultivated as in the case of **Powell v McFarlane 1977 38 P & CR 452** and have consistently found that the payment of taxes is insufficient to amount to or constitute the factual element of possession or evidence of Adverse Possession. The case of **Richardson v Lawrence (1966) 10 WIR 234** is authority for so saying. Nevertheless it has been held that payment of taxes levied on the person in possession is evidence of the *animus possidendi*. The case of **Cobham v Frett**¹⁰ is authority for saying that acts of user relied on as indicating possession included the cutting down of trees, the preparation of charcoal, the grazing of cows, the picking and selling of sea grapes, fishing in the pond and from time to time taking loads of sand for building purposes, the Privy Council upheld the trial Judge's decision that these acts of user failed to demonstrate a sufficient degree of sole user and possession.

[57] **Of acts inconsistent with the intention of the registered proprietor**, *Pye's* case is said to have settled the law regarding whether the acts of the possessor must be inconsistent with the intentions of the paper owner so as to establish possession. Lord Browne-Wilkinson at paragraph 43 of his opinion stated: "The suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong... The highest it can be put is that if the squatter is aware of a special purpose for which the paper owner uses or intends to use the land and the use made by the squatter does not conflict with that use, that may provide some support for a finding as a question of fact that the squatter had no intention to possess the land in the ordinary sense but only an intention to occupy by the paper owner".

[58] Lord Browne Wilkinson concluded in paragraph 45 of his opinion by saying "For myself I think that there will be few occasions in which such an inference could be properly drawn in cases where the true owner is physically excluded from the land. But it remains a possible, if improbable inference in some cases".

Concise summary of the legal submissions of Counsel

For the appellants:

[59] Counsel for the appellants in submissions filed 12th June 2015, state the legal principles as articulated above that are to be applied, are well established and do not need restating.

[60] In essence, the appellants argue that the true meaning of the order of March 2010 is that they were given the liberty to make their applications for the areas of

¹⁰ [2000] UKPC 49

occupation and/or cultivation. They assert that the order implied that areas which were no longer under cultivation and which bore no current confirmation of cultivation/occupation must per force be included in the claims. Cleveland Richards explanation of the annotations on Rads in which he points to the absence of features and that he relied on the broad directions of the claimants as to the areas that were previously claimed/occupied are instructive. The Court is being invited to grant title to the appellants for portions of the land for which there may be no current evidence of control, occupation or cultivation.

- [61] **Of dispossession:** the question for this court is, does mere occupation amount to dispossession? At the time of initial occupation the appellants' belief was that they were entitled as of right under the Will of Abraham Richardson. However, their circumstances changed when the 1890 Deed was brought into evidence before the adjudication officer. Despite that, the initial award was made in favour of the appellants by the adjudication officer which decision was subsequently challenged under Suit 21 of 1977.
- [62] **Of Joint Possessors:** One of the grounds of appeal is that the Registrar of Lands failed to appreciate the concept of joint possessors and the culture and custom of Anguillan people. As a consequence, the Registrar erred in finding that the appellants did not establish possession and the requisite intention to possess. Counsel for the appellants in his submission stated that it was open to the court on the evidence in one or more claims to find that the appellants 'jointly possessed' certain portions of lands through their cultivation. Counsel suggested that there were areas of overlap that were being cultivated by these several persons at different points in time.
- [63] Counsel submitted that it was not inconsistent with their prescriptive claims if they were to view themselves as joint possessors and that being in possession on behalf of another does not exclude a person possessing for themselves and that of other persons.
- [64] As previously noted by the court, Pye's case *supra* is also the authority for saying that 'possession... *must be a single and [exclusive] possession... there can be a single possession exercised by or on behalf of several persons jointly...*'. In other words the effective control of the land can be exercised jointly by two or more persons but it cannot be exercised severally. Lord Hope said: *.. The general rule ...is that only one person can be in possession at any one time. 'Exclusivity is of the essence of possession'. In **Bligh v Martin*** ¹¹ Pennycuik J said "Possession is from its nature exclusive in that connexion. There is no question of concurrent possession".
- [65] *The requirement that possession must be 'single and exclusive' distinguishes possession, which is effective control of land from mere occupation of land. In*

¹¹ [1968] 1WLR 804 at 812

Hills (Patents) Ltd v University College Hospital Board of Governors ¹² Denning LJ distinguished between possession and occupation saying "... Possession in law is of course single and exclusive, but occupation may be shared with others or had on behalf of others'. In **Marsden v Miller** ¹³ it was stated that where a number of squatters make use of land at the same time, but the use each makes is independent of the others, and none of them is in effective control of the land, none will be in possession".

see also **Lucien Callwood et al v The Registrar of Lands et al** supra

- [66] The court notes that twelve (12) separate applications/appeals were filed by individuals or by representatives of the estates of the listed persons. No applications were made on the basis of joint possession and it is the court's view that the manner in which the claims were filed by individuals or representatives of the estates suggest that they cannot be converted to applications of joint possession.
- [67] The court is of the view that these claims/appeals ought to have commenced as joint possession claims by and/or on behalf of possessors jointly. However the court is mindful that there may well be a different view of the interpretation and understanding of joint possession and as a consequence, the court ought really to consider whether the evidence in certain claims is sufficient to meet the threshold requirements of joint possession so as to constitute 'possession' as distinct from mere shared 'occupation'.
- [68] **Of Overriding interests:** Counsel for the appellants submitted that at the time when Parcel 1 was registered in Benjamin's name as Personal Representative of the estate of John Richards Richardson, the registration was subject to prescriptive rights of the appellants, which rights are overriding by virtue of Section 28 (f) of the Registered Land Act Chapter R 30 Revised Statutes of Anguilla which states as follows: ***Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register—***
- (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;*
- [69] The court fully appreciates that such registration or registration of a new owner for example, would not affect the existence of overriding interests such as rights acquired or in the process of being acquired by prescription. **Privy Council Appeal No. 2 of 1993 from Antigua & Barbuda Noel Gregson Graham Davis and Another v Henry Strickland Charles and others** ¹⁴ is authority for saying

¹² [1956] 1 QB 90

¹³ (1992) 64 P & CR 239

¹⁴ (1992) 43 WIR 188

that " *If the owner is not in possession of the land, neither the registration of title nor the transfer of registered title affect prescriptive rights which have been acquired or are in the process of being acquired as overriding interests*".

Notwithstanding the principle stated above this court has noted that Overriding Interests was not pleaded in any of the claims filed by the appellants relating to land registered in Benjamin's name as Personal Representative of the estate of John Richards Richardson or transferred to other registered respondent proprietors.

SLUHCVAP 2011/0025 - Moses Joseph et al v Alicia Francois Administratrix of the estate of the Jacob Fanus deceased & SLUHCVAP 2012/0037 - St. Torrens Matty v Alicia Francois Administratrix of the estate of the Jacob Fanus deceased applied.

For respondents nos. 1-5

- [70] In submissions filed on the 10th April 2015, these respondents state succinctly that they rely on the words of Sir Vincent Floissac in Civil Appeal No 4 of 1992: " *Suit 21 of 1977 ...that the judgment of this Court in appeal No. 3 of 1985 finally and conclusively determined on its merits the issue of **ownership** of the disputed land ...*". They assert that all subsequent and related litigation were attempts to re-adjudicate the ownership of LBE.
- [71] Significantly counsel has taken the view that it is the Benjamin's trespass suit No. 23 of 2009 which led to the consent order of 2010. That order directed that certain steps be followed to enable Listed Persons to claim the lands by application under Section 135 of the Registered Land Act. Counsel submitted that the respondents who were party to the consent order have no objection to the filing of applications which they argue should be determined in accordance with well known legal principles relating to adverse possession.
- [72] **Of the relevant date:** the respondents' 1-5 assertion is that the relevant period is **1971 to 1983**, that is to say 1983 is the 'watershed' year. The court has already expressed its position regarding the relevant date and considers it unnecessary to restate.
- [73] **Of entitlement as of right and adverse possession:** the court noted from the evidence on cross examination, counsel for the respondents 1-5 sought to establish that the claims filed by the appellants are on the basis that Parcel 1 is 'succession property' and that the appellants and as did their predecessors-in-title, remain today firm in their belief that *Parcel 1 belonged to the eight (8) children of Abraham Richardson in equal shares and which has been passed down to the appellants as of right*.

[74] In **Civil Appeal No. 4 of 1992**, The Honourable Chief Justice Sir Vincent Floissac stated that: " *the Judgment in suit No. 21 of 1977 and the judgment of this Court in Appeal No. 3 of 1985 finally and conclusively determined on its merits the issue of ownership of the disputed land. There are no circumstances which entitle the appellants to re-litigate the adjudicated issue in the interest of justice*". This judgment therefore settled definitively that the ownership of Parcel 1 vest in the estate of John Richardson.

[75] The principles set out in the case of **Arnold Celestine v Carlton Baptiste**¹⁵ is the authority for saying that: '*Adverse possession can only arise where it is recognised by the adverse possessor that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner. It is inconsistent for a person to claim to be in possession of land as of right whilst at the same time claiming to be in adverse possession*'.

[76] The court wishes to distinguish the claims at bar from the *Arnold Celestine* case supra in that the respondent in that case sought declarations to the effect that **he was the fee simple owner and possessory owner** of the land. The court found that a prayer for a declaration as a fee simple owner of the disputed land was inconsistent with *another* prayer for possession. However the pleadings in the claims/appeals before this court do not disclose any claim other than the specific claims for title by prescription based on possession for 12 years, pursuant to the 1982 order of Joseph J, the 1983 consent order of Joseph J. and the consent order of 2010.

[77] As a consequence, it is the court's view that the statements made in evidence by the appellants to the effect that '*Parcel 1 belonged to the eight (8) children of Abraham Richardson in equal shares and which has been passed down to the appellants as of right*', should not be construed as constituting an additional claim to the claim based on 12 year possession, as if this were the case, it would be inconsistent with the court orders and would certainly undermine the claims in these proceedings.

[78] **Of abuse of process:** respondents 1-5 submit that these appeals should not be allowed on the ground that they are an abuse of process. The respondents rely on the guiding principle in considering when a party is estopped from re- litigating as enunciated by Sir James Wingram VC in **Henderson v Henderson**¹⁶ and the Court of Appeal case from Guyana- **Garraway v Williams**¹⁷.

[79] Essentially the respondents submit that the appellants had their opportunity during the adjudication hearing before the cadastral in 1975, the High Court in suit 21 of 1977 and Court of Appeal in civil appeal No 3 of 1985, where the issue of ownership of Parcel 1 was first litigated. According to counsel neither the

¹⁵ HCVAP 2008/011

¹⁶ 1843 1 Hare 100

¹⁷ 81 WIR (2011) 283

appellants nor their predecessors in title asserted title to the LBE on the ground of prescription. The respondents further state that all the evidence that the appellants would have required in order to establish the prescriptive title claims that they are now making, was available to them in the 12 years prior to 1983.

[80] The court is not persuaded by that submission made on behalf of respondents 1-5. The court considers that perhaps the better view is that the appellants did not raise the question of prescription when they ought to have done so, for the simple reason that their basis for occupation was as 'succession property' as distinct from these current proceedings which seek to establish ownership by '12 year possession' and that they would have been caught by the principle in ***Arnold Celestine v Carlton Baptiste*** *supra*.

[81] Critically, the court considers that the 1983 consent order gives the appellants the right to make their applications for prescriptive title for lands upon which their houses are built and areas of cultivation, which applications they are now making. Furthermore at the time that the parties entered into the 2010 consent order, the parties did so in the full knowledge of all previous attempts to re-litigate or of the abuse that is being alleged by counsel for respondents 1-5.

[82] Accordingly the court considers these arguments being raised are moot at this stage in the circumstances.

For respondent no. 7

[83] The case for respondent no. 7 is simple. In submissions filed on the 12th May 2015, counsel for respondent no. 7 stated that the sole claim filed against respondent no. 7 is the claim filed by the appellant Oliver MacDonna as Administrator of the estate of Jane Richardson and Soritha Macdonna (MacDonna) in Claim No. 2011/0051.

[84] The registered proprietor subdivided 18011B 180 and sold Parcel 18011B 238 to Temenos Realty LLC (TLR) in 2003. At that time there was no application under Section 135 of the RLA by Macdonna in respect of the subject parcel. According to counsel, at the time of the sale to TLR, the land was free and clear of all encumbrances and no encumbrances were endorsed on land register folio for parcel 180. As such the parcel 238 created on subdivision was similarly sold to TLR free and clear of all encumbrances. As a consequence says counsel, the question of rights acquired or in the process of being acquired under Section 28 (f) of the Registered Land Act, do not arise.

[85] Moreover, counsel for respondent no. 7 submitted, that an examination of the relevant plans disclosed no cultivation on the parent parcel 18011B 180 and that no objection was raised to the subdivision and subsequent mutation which created parcel 18011B 238 which was conveyed and is registered in the name of respondent no. 7. Additionally, a review of the evidence suggests that this land

which is located "under the hill" was not cultivated by the Jane Rebecca Richardson et al.

- [86] Counsel also pointed to the overlay of lots 21 B and 22 B which in part comprise the claim of MacDonna to parts of the respondent no. 7's parcel 238. Following the decision and order of the Registrar on 7th July 2011, the Registrar being satisfied only of MacDonna's prescriptive right to 0.05 acres within 21 A and 22 A, the official registry map and register was rectified to show the area 0.05 acres within 21 A and 22 A allotted to MacDonna.
- [87] Counsel therefore submits that for the purposes of this appeal MacDonna must satisfy this court that Jane Rebecca Richardson was in peaceable, open and uninterrupted possession of the lands claimed without the consent of the respondent no. 7 for a period of 12 continuous years -uninterrupted.
- [88] Counsel is referred to paragraph 68 supra; the court will not restate the principle set out therein, but will point out that as a matter of law the question of rights acquired or in the process of being acquired under Section 28 (f) of the Registered Land Act, do arise and may well arise as the court determines the claims/appeals by MacDonna in these proceedings.

Claims, Evidence and Analysis

- [89] Having regard to the above principles, the court will now proceed to consider the evidence before it to determine whether the appellants have established their claims for title by prescription, *by satisfying this court that they have been in peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession, for a period of 12 years during the years 1940 - 2015. The evidence comprise inter alia:*

- Transcript of cadastral hearing in 1975 (dispute and petition);
- Transcript of hearing in appeal before the High Court in Claim No. 21 of 1977;
- Transcript of hearing before the Registrar of Lands in 2006;
- Transcript of hearing before the Registrar of Lands in 2010;
- Statutory Declarations admitted in proceedings before the Registrar in 2010.
- Witness statements exhibits and other evidence, including site visits in current proceedings.

- [90] The court has reviewed the evidence in these claims relating to the area of land upon which the houses of the appellants are built and curtilage around their houses which have been conceded or agreed by the 1st respondent Benjamin Wilson Richardson (Benjamin). The court accepts the decisions of the Registrar to award the portions of land or parcel title registrations in respect to house lots and

curtilage in favour of the appellants arising from those hearings in 2006 , 2010 and 2011 and has no reason to disturb those findings or parcel title registrations unless there is issue in a particular claim regarding the area for the house lot and curtilage allotted.

1. Claim No. AXAHCV2010/0069: Collins Richardson v Benjamin Wilson Richardson et al

Evidence for the appellant

Collins Richardson (Collins) claims six (6) portions of land measuring in total some 14.09 acres approximately shown on Rads comprise:

- **claim 8A measuring 2.80 acres known as the Pea Ground (Red Bottom);**
- **claim 8 B measuring 2.21 acres ;**
- **claim 8 C measuring 1.64 acres (long ground);**
- **claim 8D measuring 0.09 acres known as Under the Hill;**
- **claim 8 E measuring 6.06 acres;**
- **Various 1 - Forest Bottom measuring 0.45 acres**

[91] In his evidence before the cadastral in 1975, Collins stated that he worked 'all over the land' and stated the area that he worked as "1/3 acre up on the hill near my home"... and asserted that most of the cultivation now is in that area. Collins stated then that persons put to pasture sheep and goats all over and in affidavit dated 18th January 2006 before the Registrar of Lands in 2006 ¹⁸ Collins stated that he is '...using not more than 3/4 of an acre if that much'.

[92] Collins further stated to the Registrar of Lands in 2006 that after the death of his father (Thomas Ishmael Richardson) he and his two brothers continued to occupy and cultivate the same lands, cut wood, burn coals, make brooms with thatch, plant potatoes, raise animals and so on up until 2006. Importantly, Collins stated that they never placed any wires around the area worked and that as a little boy (now aged 78 years) he knew his father, aunt Evangeline and his uncle Dickey occupied the land. Collins stated that his father '*occupied all over the property*'.

[93] There is evidence before the court however that a 12.84 acre claim on behalf of the estate of Thomas Ishmael Richardson which was heard before the Registrar of Lands in 2006 and that the order of the Registrar dated 20th April 2006 awarded only 1.42 acres of the 12.84 claimed which amount included claims now being made by Collins on his own behalf but previously claimed on behalf of his father's estate. This award by the Registrar in 2006 was not appealed against and the claim before the Registrar in 2010 was withdrawn.

¹⁸ Application pursuant to an Order of the Court in claim No. AXAHCV 2005/0050

- [94] The court gives no weight to the evidence of the witnesses called by Collins regarding the lands occupied and cultivated by his father and grandfather, as no definitive area was identified, the acreage varied between the witnesses from 10, 15 to 20 acres, boundaries were unclear and one of the witnesses did not even know the area occupied by Collins' father.
- [95] Collins' evidence on cross examination before this court in 2015 and before the Registrar of Lands in 2010 is that his father and grandfather before him grew peanuts, sorrel and pigeon peas on 8A which he occupied for years until the late 80's uninterrupted and which was subsequently sold by Benjamin in 2007. Collins stated that he took over the farming from his father and brother and they earned a living from what they caught in the sea or grew on the land, paid taxes and was in possession of land for over 12 years from 1983 as did his father before him. The court understands this culture for Anguilla as it was no different from other islands in the Caribbean.
- [96] However Collins contradicted himself at the site visit when he stated that his father stopped cultivating the lands long before the dispute started in 1975 yet he said he took over from his father and was in possession from 1983, clear evidence of non continuous possession. The court notes from the evidence that there were statements relating to payment of land tax for the years 1940 and 1941 but there was no evidence of receipts for payment and the list itself does not support Collins' evidence that taxes were in fact paid by him for his father or that taxes paid were for LBE in particular.
- [97] With respect to 8B Collins referred to areas where families like him have specific areas with their houses and having cultivation on other areas of Parcel 1. Collins essentially did the same cultivation on 8 B planting pigeon peas as the main crop upon which he tied his animals but stated that the land was cleared of bush by Benjamin to be used as the Seventh Day Adventist Church parking. Collins stated that he worked the land from age 18 years but that he left and stopped working there many years before the SDA church was built. He could not remember exactly when the church was built, probably started construction in the late 1970's.
- [98] Collins described 8C as his family land for years and is the land that he currently cultivates with corn, yams tomatoes potatoes beans sweet peppers and so on, with no physical boundaries since 'all the family were around him' working their area on the land. Collins identified the persons Evangeline Hughes and her brother Dickie (heirs of Thomas Ishmael Richardson) who worked the land at some point in time but had stopped cultivating and no one continued. The court notes that based on the evidence before it that the claim 8 C could not be substantiated as Collins admitted that he stopped working the land and therefore his possession of 8 C is not continuous.

[99] However the court was informed of three (3) areas of the uncontested land comprising parcel 23 measuring 1.50 acres that is to say: Collins (portion of 8C), Evangeline Hughes (portion of 10A shown on Rads on line 3152) and heirs of Thomas Ishmael Richardson (cultivation and house). All of these persons put in claims for portions of that parcel 23. The court was informed that the parcel was adjudicated upon, boundaries fixed before the Registrar in 2006 and parcel 23 is registered in the estate of Thomas Ishmael Richardson. The Court was informed that parcel 23 will be shared between Collins, Evangeline and estate of Thomas Ishmael Richardson (see paragraph 93 supra)

[100] As to 8D, Collins stated that he cultivated the land with the same crops as above and alongside his father, uncle and cousin for several years and that he took over a reduced area from his father. At the site visit Collins stated that he planted 'some of everything' but he stated that he stopped cultivating in that area in the late 1980's to early 1990's. Again Collins has not given any definitive evidence on the year of commencement of his occupation nor can the court make an assessment as to his acts of factual possession in respect to this claim.

[101] Collins' claim to 8E for area of his house and his children's houses and areas of bush used as a privy, describes areas of lands that he used to cultivate east of his house. With respect to Various 1- the Forest Bottom, Collins' claim (Rads 3162-3166) comprised a strip from lands cultivated and occupied by several families with no physical boundaries between the strips. According to Collins 'each family just kept to their strip'.

[102] Collins admits that the many areas of Parcel 1 was 'pure bush and untouched' but despite that he states that the land was used to earn their income. According to Collins he has never paid rent, he was in possession from *before* 1983 in excess of 12 years, it was his birthright, he determined how to use the land as if he was owner and families worked closely with each other and never built walls.

Evidence for the respondents nos. 1-5 & 7

[103] Benjamin stated in cross examination that he objects to claims 8 E and 8 B on the basis that Collins did not cultivate in those areas as he alleges. He admits that Collins occupied his house on 8E and the other structures for well over 40 years which land is now Parcel 8 already conceded by Benjamin who stated that he was about 10-12 years old when Collins came to live there and recalls one George from St. Martin helping Collins to build his house. Benjamin objects to claim 8 D on the basis that he cannot remember Collins ever working under the hill.

[104] With respect to part of 8C showed as a clearing, Benjamin does not object to that area. With respect to 8A Benjamin objects to that claim on the basis that Collins never cultivated there. Benjamin objects to the strips of fertile land 3162-3165

known as the Forest Bottom stating that apart from his father (Wallace Richardson) no one else cultivated lands there. According to Benjamin from what he knows, Collins only cultivated around his house and around his father's house (in the areas not cross hatched on Rads) and did so before 1975. He denied ever helping Collins to cultivate any land and agreed that Leonnie and her children cultivated south of where his father worked in the Forest Bottom.

Site visit

- [105] The evidence given by Collins at the site visit although conflicting and confusing is instructive. Collins took issue with Benjamin's use of a bulldozer to cut a road through his ground and through pigeon peas planted by a family member Doris. It appeared to the court that areas of claim for Collins, Doris and Eneria overlap and Collins was unable to remember exactly when the road was cut but Benjamin admitted that Collins had cultivation in the area where the road was cut in 1991 which parties agreed in any event was contained within the uncontested area of claim 8E in the curtilage surrounding the three (3) houses shown as parcel 8.
- [106] The court on review of (a) C6 (a) - composite plan showing Rads over laid on C4 as aforementioned and (b) C 6(b) - composite plan showing Rads over laid on C7, accepts those two plans as corroborating the evidence of Collins regarding cultivation in three (3) areas of his claims to wit: (1) the area within the uncontested curtilage near his house within 8E (8 E1) parcel no. 8 (2) within 8 B and (3) the area within 8E (eastern boundary) - (8E 3).
- [107] As a result of that corroborating evidence the court is persuaded that cultivation existed in these three (3) areas at the time of the 1982 and 1983 Orders. However although with the exception of the uncontested area of cultivation within the curtilage of Collins' house 8 E 1 parcel no. 8, the court notes that the other two areas of cultivation within the 8 B claim and the area referred to above as 8E 3 within the 8E claim as shown on C 6 (a) and C6 (b), are significantly **less** than the amount claimed by Collins.
- [108] The court had sight of current actual cultivation on 8 E - 8E3 which Collins admitted was planted about three (3) months prior to the trial but which he had been cultivating for maybe three (3) years. Although the court accepted Collins evidence that he had cultivated the land throughout the 3 year period, the court found difficulty in accepting that Collins had established the 12 years uninterrupted possession, required to prescribe whether working with his father or on his own. Nevertheless Collins admitted that his father did not plant on his return from Guadeloupe and Collins admitted that he stopped working the land and started again maybe three (3) years ago. The court was satisfied that Collins by his own admission certainly was not cultivating in 2010 as he could not even remember the site visit of the Registrar of Lands in 2010.

Analysis of Collins Richardson's claim

- [109] The court has surmised that whilst C4 and C 6 (a) corroborate evidence of cultivation in the two (2) contested areas of Collins' claims 8 B and 8E (3), the amount claimed by him far exceeds the area likely to have been under cultivation in 1983 (see C4). However the court does not have a sense of any other evidence of actual physical control by Collins of the entire area claimed by Collins and is therefore not satisfied that Collins has attained the threshold requirements necessary to establish possession for 12 years.
- [110] The court is not satisfied that Collins demonstrated sufficient degree of sole user, physical control or possession necessary to establish the claims for the larger portions in claims 8 E and 8 B which accordingly fail.
- [111] Furthermore the court has considered the evidence in respect of the other claims and using excerpts of the evidence concludes that, the clear disparity, uncertainty and contradiction in the evidence, in terms of the area worked, persons other than him working the land, with no physical boundaries or any 'wires' around the area worked, does not in my mind demonstrate sufficient physical control by Collins and that possession is not single and exclusive as Collins described he and his two brothers continued to occupy and cultivate the same lands his father worked, which he now claims for himself. This the court views is not sufficient to establish an intention to exercise control on his own behalf to the exclusion of others.
- [112] Importantly the evidence is uncertain, ambiguous and conflicting as regards the continuous 12 year period of possession to be considered and Collins' inability to provide a definitive time of commencement of the 12 years. As such, the evidence in support of these claims is not very strong and does not substantiate the uninterrupted 12 years that Collins is required to establish for prescription. Collins himself admitted that his possession/occupation was not continuous.
- [113] On the issue of joint possession, the court has considered that the acts described by Collins in terms of persons other than him working the land and described all the family working around him on their area on the land and Collins working alongside his father, uncle and cousin, cultivating the land, is in the court's view evidence of 'occupation' shared by them and does not amount to the 'single and exclusive possession' and effective control of the land as required by law.
- [114] On the basis of the foregoing, this court declines to make an order for prescriptive title in favour of Collins Richardson in respect to claims: 8 A , 8 B, 8 C (except the cultivated areas - Rads 3152 -3166 /parcel 23 conceded by Benjamin, 8 D, 8E (except parcel 8- houses and curtilage conceded by the Benjamin) and Various 1.

2. Claim No. AXAHCV2010/0071; Boswell Richardson v Benjamin Wilson Richardson et al

- claim 5: measuring 1.80 acres

Evidence for the appellant

[115] In his evidence Boswell Richardson (Boswell) stated that his claim comprised part of Parcel 1 upon which his house is built which commenced in 1962 together with extra land behind his house which he states measures 4 acres approximately. He claims that prior to 1983, for an uninterrupted period of 12 years or more, to have cultivated pigeon peas and corn to the back of his house whilst he built his house and after it was completed the house has been rented out for many years, without any interference from anyone. According to Boswell, the families worked their land and respected each others' boundaries and that his own boundary was a small rock wall on the northern boundary.

[116] The court has noted that in his evidence in support of Collins before the Registrar of Lands in 2006 in an application pursuant to the Order in claim No. AXAHCV2005/0050 supra, Boswell stated then, that his claim to the land was on the basis that he had built a house on the land. Boswell admitted on cross examination to various contradictions in his evidence before the Registrar of Lands and his statutory declaration in 2010, his witness statement and evidence before this court. For example Boswell admitted before the Registrar that he cultivated about 3/4 acre at the back of his house and his claim before the Registrar of Lands in 2010 was originally for 4 acres which he states was an error, he now claims less than 2 acres which he admits is not true and admits that his claim before this court is one acre more or less.

[117] Importantly, Boswell admitted that he has been living overseas for about 47 years and not 30 years as he originally stated and only returned specifically in January 2015 for the trial though not permanently. Significantly, Boswell agreed that he was satisfied with the Registrar's decision but still appealed because he was entitled to claim the spot behind his house which was used as privy. He conceded that he had difficulty pointing out the boundaries of his land claim before the Registrar and admitted that there was no fence around the boundary of the land claimed by him.

Evidence for the respondents nos.1-5 and 7

[118] Benjamin stated in cross examination that he could not truly remember when Boswell started to build his house. Perhaps in the late 1960's. Benjamin agreed that at that time people used privies in Anguilla but would not use other people's privy. He agreed that the house in which he grew up with his father was about 1/4 acre of land. He stated that the privy was outside of a rock wall and each

family knew where their privy area was. Benjamin was aware that there was bush beyond Boswell's house and he had a neighbour on the east but does not know that anybody lived to the west.

Site visit

[119] At the site visit Boswell pointed out his house which he stated he built in 1962. Whilst building, he cultivated around his house in the area claimed. Boswell said he stopped cultivating in the late 1970's and since he stopped cultivating the land has been taken over by bush. Benjamin stated that there was no cultivation in the area claimed by Boswell.

Analysis of Boswell Richardson's claim

[120] The court finds it difficult to reconcile the contradictions in the evidence of Boswell, given his lengthy period of residence overseas with the extent of the area claimed. However the court accepts that the true statement of Boswell's occupation and possession is his evidence in support of Collins before the Registrar of Lands in 2006 where he stated that his claim to the land was on the basis that 'he had built a house on the land'.

[121] On the basis of the foregoing, the court is not satisfied that Boswell has established the factual possession necessary for prescriptive title for claim 5 and holds the view that the area of 0.63 acres parcel 5 conceded by Benjamin is the only portion of Parcel 1 that Boswell is entitled to.

[122] Accordingly this court declines to make an order for prescriptive title in favour of Boswell Richardson in respect of his claim no. 5 except for the area of 0.63 acres -parcel 5 conceded by Benjamin.

3. Claim No. AXAHCV2011/0052: Sybil Rymer Administrator of the Estate of Florence Richardson v Benjamin Wilson Richardson et al

- **claim 14A: measuring 3.55 acres (including house)**
- **claim 14 B measuring 10.27 acres (Kanuka)**

Evidence for the appellant

[123] The claim by Sybil Rymer (Sybil) is made on behalf of the estate of her mother Florence Richardson. Sybil states that her application is made as her mother could have done in 1983, that being the relevant date. Sybil was born in 1931 and left Long Bay for St. Thomas in 1960, but has knowledge of the possession and occupation by her parents until her father's death in 1971. Sybil describes one area to the north as measuring 5 acres approximately and the house with a

large yard which the family occupied for over 40 years and a bush area behind the house for a privy. She claims that the area extends beyond the buffer line shown on Rads.

[124] In her evidence Sybil states that her parents cultivated the long ground area planting corn potatoes, yams and so on. According to her '...there were no defined boundaries, each family knew where their cultivation begun and ended'. Their goats and sheep were also pastured on the land.

[125] After her father's death in 1971, Sybil states that her mother remained in Anguilla until she moved to St. Thomas to live with Sybil and her sister in the 1990's. She recalls that around 1983 her mother continued to possess, occupy and openly cultivate the lands, never paid rent and had full control of the land as legal owner for over 12 years and no one interfered with that until Benjamin stopped the government from ploughing the land in the late 1980's to early 1990's. Since then as a result of Benjamin's actions and her mother's old age, the land has not been cultivated or used for over 30 years.

[126] Sybil's evidence that from 1983 her mother continued to possess, occupy openly and cultivate the lands was contradicted by Boswell Richardson, brother of Sybil and son of Florence Richardson (Boswell supra) when at the site visit, Boswell stated that 'cultivation stopped a long time ago and that since his father died in 1971, 'no one else cultivated'. The court noted a clearing where Boswell explained that cultivation there ceased since 1971. The court observed only rock and bush and confirmed that there is no current cultivation, occupation or possession of 14 B.

Evidence for the Respondents nos.1-5 and 7

[127] Benjamin disputes these two (2) claims. He admits that Florence whom he knew as a child built her house on long ground before he was born. Benjamin concedes the house and the 0.75 acres allotted to it- parcel 14.

Site visit

[128] At the site visit, the evidence in respect to claim 14 A was again given by Boswell. He stated that the house belongs to his mother and registered as parcel 14 measuring 0.75 acres. There was no fence put by his mother. The court had sight of an area which was recently cleared of bush believed to be within parcel 14 measuring 0.75 acre already registered in Florence Richardson's name. He further stated that his mother cultivated like everyone else - peas, corn, potatoes and papaya. The court observed that there is no evidence of current cultivation occupation or possession of land comprising claim 14 A which is now covered by bush.

[129] Lucille Richardson (Lucille) gave evidence in support of the claim on behalf of the estate of her mother Florence Richardson. Lucille was confused in trying to locate the quarry land on C4. She asserted that she helped her mother work the quarry lands and that Sybil worked until she was 82 years when she moved to St. Thomas. Lucille recalled going home from St. Thomas and helping her mother cultivate. She stated that her mother planted on the 10 acres with the help of her nieces and nephews even through drought.

Analysis of Florence Richardson's claim

[130] Although the court found both Sybil and Lucille to be forthright in the presentation of their evidence, but Sybil's evidence that she recalls around 1983 her mother continued to possess, occupy, openly cultivate and had full control of the land as legal owner for over 12 years cannot be substantiated, especially in light of Boswell's evidence at the site visit that 'cultivation stopped a long time ago' and that since his father died in 1971, 'no one else cultivated'.

[131] Furthermore in light of Sybil's evidence that Benjamin stopped the government from ploughing or fencing the land in the late 1980's to early 1990's and since then as a result of Benjamin's actions and her mother's old age, the land has not been cultivated or used for over 30 years, this corroborates the evidence of Boswell in that regard, in any event possession was not continuous.

[132] Lucille stated that her mother planted on the 10 acres with the help of her nieces and nephews even through drought. To the court planting 10 acres of land during drought is highly unlikely and in any event is contradicted by the evidence of Boswell.

[133] Sybil left Anguilla in 1960 and there is no evidence as regards Sybil returning to Anguilla before her father's death in 1971 and that she knew what and where was cultivated by her parents during that time and continued by her mother after the death of her father. There is no definitive period of cultivation to determine the 12 years of continuous possession required to prescribe, nor has Sybil provided a clear statement of the start and end of the period of her mother's possession.

[134] The court is not convinced that any cultivation took place at any time during any continuous period of 12 years. In light of Sybil's evidence for example that there were 'no defined boundaries' no fencing, in fact no real or particularly strong evidence of a sufficient degree to show physical control of the lands in the claims, the court is persuaded that there are no other acts of Florence which a court could determine confirms the factual possession and/or constitute an intention to possess by Florence for her own benefit.

[135] This court accordingly declines to make an order for prescriptive title in favour of the estate of Florence Richardson in respect to these 2 claims- 14 B and the contested portion of 14A except parcel 14 upon which her house is built.

4. Claim No. AXAHCV2010/0072: Calvin Richardson v Benjamin Wilson Richardson et al

- **claim 6A -0.70 measuring acres (house)**
- **claim (1 B &) 6C -Under the Hill - measuring 1.97 acres**
- **various 1 -Forest Bottom - measuring 0.43 acres**

Evidence for the appellant

[136] Calvin Richardson (Calvin) stated that he was making these claims today in his personal capacity and not on behalf of heirs. Calvin stated that there were no boundaries between the portions of land worked and all had common knowledge of where each other's land was. There were no fences, no walls, no hedges and so on.

[137] With respect to claim 6 A, Calvin stated that he fenced around his house but admitted in his evidence before the Registrar that although he claims 0 .70 acres around his house, 0.2 acres of the 0.70 acres fell outside his fence which he built about the year 1975. Calvin accepted before the Registrar 0.5 acres for the area around his house and in essence stated that he was not really working the 0.2 acres which fell outside his fence. Calvin states that he now claims the 0.70 acres around his house located on claim 6A and has been in possession of the land for over 38 years and possessed the land exclusively and uninterrupted.

[138] At the site visit Benjamin agreed to "square off" the area originally objected to by him claim 6A so that it could be included within the boundaries of Calvin's fence and withdrew his objection to the 0.70 acres to be allotted to Calvin around his house parcel 6.

[139] Of Claim 1 B & 6C Calvin claims the west half of the land which he cultivated with his father, yams, potatoes, corn cassava and so on. According to Calvin they reared goats and sheep on the land and rotated the areas planted from time to time. Calvin stated that he occupied the land for more than 12 years prior to 1983 and worked the land openly and peaceably, never paid rent and controlled the land as if he had legal title.

[140] Of Various 1: Rads 119--3159, Calvin claims to have worked the land alongside his father and his brothers and when they stopped cultivating he continued planting. Calvin asserted that he possessed the land for more than 12 years prior to 1983 and continued to cultivate right up to early 1990's uninterrupted. He

came to the land peaceably. However Calvin did not state the specific date that his possession commenced prior to 1983.

[141] Calvin reluctantly admitted that he stated before the Registrar in 2010 that he left Anguilla for St. Thomas in 1968 where he stayed for 30 years and returned permanently, some 15 years ago. He disagreed that he did not cultivate any of the lands claimed and that he did not do so with any intention to claim the land exclusively as his. Calvin was shown C4 on which he identified at least 29 houses and 4 areas of cultivation and identified his house next to No. 6 and stated that the areas that he worked (cultivated) are not shown on C4.

[142] The court does not consider that the evidence of James Hughes (James) and Leonard Fleming (Leonard) assist the court in any way in determining Calvins' possession by cultivation of the land for 12 years prior to 1983 especially as James could not identify the period of time that Calvin allegedly cultivated and Leonard left Anguilla in 1965 about 3 years before Calvin and incorrectly asserted that Calvin cultivated 200 acres under the hill, 5 -7 acres in the quarry and 10 acres in the Forest Bottom. He clearly had no real knowledge of Calvin's claims before the court.

Evidence for the respondents nos.1-5 and 7

[143] The evidence of Benjamin with respect to these claims is that Calvin has a house on Parcel 1 which Benjamin concedes. However Benjamin does not agree that Calvin ever occupied or farmed any areas of land claimed.

Site visit

[144] At the site visit in respect to lands under the hill, Calvin stated that his father, himself and brothers worked the land as a family planting the same crops. He could not remember when his brother stopped cultivating. The Court saw no cultivation in the Forest Bottom which was presently covered with bush and according to Calvin had been so for almost 40 years. He stated that he cultivated the land prior to 1983. The area was covered with bush and Calvin confirmed that he had stopped cultivating since 1975.

Analysis of Calvin Richardson's claim

[145] At first blush Calvin appeared to be a credible witness but as his evidence on cross examination unfolded the court found it difficult to reconcile the inconsistencies and contradictions. For example Calvin went to St Thomas in 1968 and stayed for 30 years which clearly contradicted his evidence that he cultivated the land for 12 years or 12 years ***continuously and uninterrupted*** prior to 1983.

[146] Apart from Calvin's evidence of his cultivation prior to 1983 and his evidence that there are no boundaries, no fences, no walls, no hedges between the portions occupied and worked by the family members, there is no other evidence before the court regarding other acts of physical control or occupation or possession or sufficient degree of sole user by Calvin of the specific portions claimed.

[147] The court does not accept a mere statement by Calvin that he *occupied* the land for more than 12 years prior to 1983 or that he *possessed* the land for more than 12 years prior to 1983 and continued to cultivate right up to early 1990's uninterrupted, without more, especially in light of the inconsistencies and contradictions in his evidence, as sufficient to amount to the factual possession and requisite intention to possess in order to found his claim.

[148] Accordingly based on the foregoing, this court declines to make an order for prescriptive title in favour of Calvin Richardson in respect to claims: 1 B & 6 C; Various 1 Forest Bottom.

5: Claim No. AXAHCV2010/0076; Marge Hughes Administrator of the estate of Evangeline Hughes v Benjamin Wilson Richardson et al :

- **claim 10 A -2.20 acres**
- **claim 10 B-0.50 acres (house)**

Evidence for the appellant

[149] Marge Hughes (Marge) gave evidence in respect of the 2 claims on behalf of the estate of Evangeline Hughes (Evangeline) who was born on the land. Marge recalls living in her grandmother's house with her mother Vera Hughes. She recalls them planting seasonal crops on a portion of land south of the road. Marge describes that there were no actual or formal physical boundaries or walls since all were family members working their ground planting corn, peas and tied their animals in the rocky areas of the land.

[150] Marge asserted that her grandmother Evangeline occupied the land and her family worked the land together and possessed it in excess of 12 years prior to 1983, uninterrupted and never paid rent. The land was always occupied by the family being descendants of Thomas Edgar Richardson her great grandfather and heir of Abraham. Marge asserted that her grandmother's view was that Parcel 1 belonged to the eight (8) heirs of Abraham and when she died in 1986 she still held that view.

[151] Marge stated that Evangeline worked the land from 1970 until 1984 and she did so as an heir of Thomas and Nancy, but although Evangeline was aware of the court order in 1983 she did not make a claim whilst she was alive. Marge

admitted that about 10 years ago she (Marge) made a claim on behalf of the estate of Evangeline for the house and the land around it **only** and did not apply for any other portion of Parcel1. Marge disagreed that Evangeline did not cultivate any land in claim 10A.

Evidence for the respondents nos.1-5 and 7

[152] Benjamin denies that Evangeline did any cultivation on all the lands claimed. but conceded that she had a house on parcel land about 200 yards from his family's house and agreed that, based on her previous claim, that she was allotted 1/2 acre land upon which her house is built- claim 10 B, now parcel 10.

Site visit

[153] The court noted an overlap between part of claim 10 A and claim by Thomas Ishmael Richardson. At the site visit Collins stated that both Evangeline and her brother (heirs of Thomas Ismael Richardson) used to cultivate part of the land and after their deaths he continued to cultivate.

Analysis of the claim on behalf of the estate of Evangeline Hughes

[154] This court concludes that based on the evidence before it claim 10 A was for the most part unsubstantiated as the court is persuaded that the only genuine claim for Evangeline is the claim in respect to the house and 1/2 acre curtilage which Marge made 10 years ago and Evangeline is recorded as the registered proprietor of parcel 10. The court believes that this is the reason that Marge with the knowledge of the orders of Joseph J. only made that application for the only portion of land which she occupied and over which Evangeline had some physical control with an intention to possess in her own name.

[155] The court is certainly not persuaded by any evidence before it that could substantiate Evangeline having sufficient physical control and does not accept without more, the evidence by Marge that Evangeline worked the land from 1970 until 1984. In the absence of any continued presence of cultivation by Marge or her daughter Vera (both of whom Collins stated were unable to work the land because of their advanced age) or other evidence of other physical acts and according to Marge with 'no actual or formal physical boundaries or walls, all family members working their ground...' which would demonstrate a sufficient degree of control, single and exclusive to constitute factual possession with the intention to possess the said portion of land.

[156] This court therefore finds that it must decline to make an order for prescriptive title to 10 A in favour of the estate of Evangeline Hughes.

[157] The Court notes also the evidence of Collins at the site visit where he stated that both Evangeline and her brother used to cultivate part of the land and after their deaths he (Collins) continued to cultivate. However no date was identified by Collins as to when *'he took over the cultivation'* clearly on his own behalf and not on behalf of Evangeline and her brother or her child jointly. The court cannot view that evidence as sufficient to amount to joint possession by them either, save and accept as amounting to 'shared occupation' or 'occupation ' at particular points in time, the occupation not constituting the possession required for 12 year possession.

[158] As pointed out earlier (paragraph 93 supra) parcel 23 is now registered in the name of heirs of Thomas Ishmael Richardson and claims for portions of parcel 23 having been made before this court by Collins and Evangeline the court was informed that the parties agreed with Benjamin conceding, that parcel 23 will be shared between Collins and Evangeline Hughes and estate of Thomas Ishmael Richardson.

6: Claim No. AXAHCV2010/0078; Calvin Richardson Administrator of the estate of Victor Richardson v Benjamin Wilson Richardson et al :

- claim 26 measuring -2.38 acres -Under the Hill
- parcel 20- measuring 0.50 acres (house)

Evidence for the appellant

[159] Calvin Richardson (Calvin) gave evidence in support of this claim on behalf of the estate of his deceased brother Victor. There is no dispute regarding the 0.05 acre lot upon which Victor's house is constructed now registered as parcel 20, but Benjamin objects to the remainder of claim 26. Calvin states that prior to his departure from Anguilla in the late 1980's, his brother cultivated the land because the land was occupied by his ancestors and it is for this reason that his brother built his house in that location.

[160] Calvin asserts that his brother Victor and other family members and himself worked the land alongside their father prior to 1983 until the late 1980's when he left Anguilla to live in the United States after difficulties with Sonny (Benjamin) over the land dispute and thereafter Calvin stated that he continued to cultivate planting sugarcane, yams, potatoes, peas, corn and so on and also kept sheep and goats and a donkey. Calvin describes the boundaries of the land and states that Victor was in occupation for well over 12 years, peaceably, given that it came to him from his father as his birthright. Calvin however totally disagreed that Victor did not work anywhere else other than land around his house.

[161] Referring to exhibit C4 Calvin stated that after 1982 he was never invited by the Registrar to point out any cultivation on Parcel 1. Calvin again reluctantly admitted that he stated before the Registrar in 2010 that he had been residing out of Anguilla for about 30 years having left about 1970/1971. The court notes that he previously stated on cross examination with respect to his claims that he first left Anguilla in 1968, came back, spent 2 years in Anguilla and went back to St Thomas. He also reluctantly admitted on cross examination that Victor also left Anguilla **one year or so before him** and this contradicts his previous evidence that Victor left Anguilla in the late 1980's.

[162] In his evidence in support of Victor's claims, Leonard Fleming (Leonard) states that as a boy he grew up in Anguilla and left Anguilla in January 1965. Leonard disagreed that he knows nothing about the cultivation by Victor outside the curtilage of his house where he is claiming and recalls the time that Victor's father worked the land, there were many stones, trees, brush grass and the stones were used to make banks which they called a wall of rocks. Leonard's explanation of a wall of rocks added nothing to corroborate the evidence to satisfy the court that Victor in fact cultivated the land in claim 26. He recalled days when persons grew different crops in different seasons and people assisted by 'jollification'.

Evidence for the respondents nos.1-5 and 7

[163] Benjamin gave evidence on behalf of respondents 1-5 and 7. He stated that C7 represented the estate of John Richardson and shows the houses and lots drawn in accordance with the 1983 consent order. He agreed that after 1982 he was not invited by the Registrar to identify cultivation areas claimed by Victor Richardson or the estate of Victor Richardson nor could he remember whether the heirs of Abraham Richardson or he himself were invited to Parcel 1 to point out areas of cultivation for the preparation of the plan. Benjamin agreed that an heir of Abraham Richardson related to Eneria Richardson has a house in front of Victor's house.

Site visit

[164] At the site visit Benjamin pointed out the area around Victor's house and the court noted that the rest of the land slopes downhill with a steep drop down to the sea. There are piles of rocks in areas which according to Benjamin were used for the construction of the road. Calvin did not know when Victor stopped cultivating but stated that there was no cultivation after he died in 2002. Calvin pointed out to the court the area down the hill which was allegedly cultivated in sugar cane by Victor and other areas where pigeon peas were cultivated. Benjamin however denied that Victor and the others ever cultivated in his time.

Analysis of claim on behalf of the estate of Victor Richardson

[165] Despite the inconsistency, contradiction and attempt by Calvin in his evidence to conceal the truth which was highlighted previously before the court on cross examination, Calvin continued to do the same with respect to the date he left for St. Thomas and that for which Victor left for the United States in his evidence in this claim.

[166] Calvin's asserted that his brother Victor and other family members and himself worked the land alongside their father prior to 1983 until the late 1980's when Victor left Anguilla to live in the United States but admitted however in clear contradiction of his previous evidence that Victor left for St. Thomas 1 year before him which the court computes to be either 1967 or 1969.

[167] That aside, the evidence that Victor and other family worked the land alongside their father prior to 1983 and also before he left in 1967/1969, demonstrates that Victor's participation in the cultivation within 12 years before 1967 if at all, does not qualify as having the appropriate degree of physical control and certainly was not a single and exclusive possession on his own behalf as required to found his claim 26.

[168] Critically, Victor having left in 1967/1969 with no evidence before this court of him ever returning to his cultivation and Calvin's evidence relating to Victor leaving in the late 1980's "after difficulties with Sonny (Benjamin) over the land dispute" establishes for this court that Victor's occupation and/or possession if at all was interrupted and therefore was no longer peaceable or continuous.

[169] There is no evidence before this court other than the alleged cultivation which can substantiate other acts of physical control or occupation by Victor in respect to claim 26. Furthermore, the court is fortified in its position on observing the terrain and location of that claim overlooking the sea with rocks and bush and with no evidence of the slightest possibility that there was ever any cultivation in that area whether before or after 1983, that Victor lacked the factual possession and the requisite intention to possess necessary to establish his claim 26, he having no sufficient degree of physical custody and control of the land.

[170] The court accordingly declines to make an order for prescriptive title in favour of the estate of Victor Richardson in respect of claim 26.

7: Claim No. AXAHCV2010/0081; Royston Richardson Administrator of the estate of James Richardson v Benjamin Wilson Richardson et al :

- **claim 9 A -measuring 2.96 acres -**
- **claim 9 B- measuring 0.50 acres (house) parcel 9 on the hill**

Evidence for the appellant

[171] With respect to claim **9 B : Parcel 9** the court accepts and Benjamin does not object to parcel 9 upon which the house owned by James Richardson is built.

- [172] Royston Richardson (Royston) and his brother Allan Richardson (Allan) gave evidence in respect to this claim.
- [173] With respect to 9 A, Royston stated that he observed his father farming opposite his house with corn, peas, carrots, grazed his animals, planted thatch for brooms and so on, on about 1/2 acre of land. He remembers his father James cultivating and his children helping him in all activities on the land.
- [174] Interestingly, Royston states that his brother Allan built the foundation of his house on 'that land' because it was exactly where his father cultivated his crops and that he considered the land to belong to his father. He stated further that the land that he is claiming is land handed down from Abraham Richardson to Thomas Eagar to Thomas Ishmael Richardson (Thomas) and to his father James, passed on from generation to generation.
- [175] Royston asserted that his father possessed the land and house for over 12 uninterrupted years prior to 1983 and until his death in 2005 as was his birthright. In describing the land and how the work on the land was done, he asserted that there are no physical boundaries and his father had no need for boundaries, as 'theirs was a culture of no walls and barriers between family'. He agreed that Thomas Ishmael is his grandfather and father of James and Collins.
- [176] Having been shown the evidence of Thomas at the cadastral hearing in 1975 where Thomas stated that crops were grown 'around our houses on the Hill', Royston conceded that Thomas would be the best person in 1975 to say where he was growing crops at that particular time.
- [177] Royston recalled his evidence before the Registrar of Lands where he admitted that his father James and Collins cultivated the same land and describes the lands his father cultivated as the same land that Collins is also claiming as his - 'a long strip with no bounds, no walls - so all the land was together'. But, says Royston, each individual cultivated his own piece of land. He also admitted that the whole family, Collins, Evangeline, Ishmael and others are all entitled to the land being claimed. Royston also admitted that before the Registrar in 2010 he held the position that lands of LBE Parcel 1 is to be divided equally amongst the heirs of Abraham Richardson.
- [178] Allan stated that his father was a farmer and fisherman. Allan's evidence is that he observed his father cultivating the land on the south side of the Long Bay Road opposite his house, planting corn, peas, carrots and so on. Allan also asserted that his father possessed the land and house for over 12 uninterrupted years prior to 1983 and until his death in 2005 as was his birthright. He stated that the land his father planted was between Carolyn's house to the east and his Uncle Nelson's house to the west and the southern boundary ends with Nerrie's land (Eneria Richardson).

[179] He stated that *he built his foundation in that very location because this was exactly where his father raised his crops* and admitted receiving a letter from Benjamin's lawyer accusing him of trespassing. However Allan admitted the contradiction in his evidence when he stated that *he built the foundation of his house where his father planted his crops and later stated he built his foundation of his house where his grandfather had his ground and his house.*

[180] Allan asserted that his father James and grandfather Thomas occupied the same land and that both his father and his uncle Collins occupied the same land. Allan admitted that his grandfather Thomas is one of the persons listed as having a house on the land.

[181] Allan currently lives in his father's house but stated that his father occupied other places on the land and having read the evidence of his grandfather Thomas in the transcript of the hearing before the cadastral, Allan conceded that the lands that he is now claiming for his father is land from his grandfather Thomas handed down.

Evidence for the respondents nos.1-5 and 7

[182] Benjamin in his evidence agrees that Allan's foundation is on 9A, but states that the facts do not support the estate's claim that the foundation of Allan's house on 9A is built on the location or in the area of Thomas's old house. He asserted that it was settled before the Registrar of Lands in 2006 that Thomas was entitled to 1.42 acres or Parcel 23 and conceded James' entitlement to the 1/2 acre around his house registered as parcel 9 (see paragraph 93 supra).

[183] Benjamin denied that Allan's foundation on 9 A is within the same general area where Thomas had his first house. Benjamin denied that the hurricane in 1960 blew down Thomas' first house because Thomas was not living in Anguilla in 1960 at the time of the hurricane and there was no house in that area at that time.

Site visit

[184] At the site visit Royston showed the area on 9A where he stated that his father cultivated parts of the land planting corn and cassava until he stopped in the late 1990's and he pointed out the foundation of Allan's house. He stated that nothing is being done on the land currently now covered with bush. Royston pointed out rocks that his father crushed, an old broken fish pot, bush, some areas of cleared land where they used to do some cultivation until the confusion started in 1975 and admitted that he does not know when his father started cultivating. He pointed to areas where he says his father cultivated peas, corn and potatoes.

Analysis of the evidence for the claim for the estate of James Richardson

- [185] Allan stated on cross examination that having read the evidence of Thomas before the cadastral in 1975, he concedes that the lands that he is now claiming for his father is land from his grandfather Thomas handed down.
- [186] Thomas also stated before the cadastral that crops were grown 'around our houses on the hill' and Royston conceded that Thomas would be the best person in 1975 to say where he was growing crops at that particular time. The court notes that claim 9A is certainly not 'on the hill'. Thomas by his own admission. therefore never occupied or cultivated and was never in possession of 9A.
- [187] The court has perused Collins' evidence taken on the 24th March 2006 at the hearing before the Registrar of Lands pursuant to an order in suit no. AXAHCV 2005/0050. Collins stated that the lands occupied by his father Thomas are the same his brothers and himself continued to cultivate after the death of his father. Collins admitted that before his death his father lived in the house where his daughter Carolyn now lives, where Carolyn's house is currently located. The Registrar found Thomas and his heirs to be in possession of 1.42 acres - registered as parcel 23 of Long Bay Estate and the names were registered accordingly (see paragraph 93 supra).
- [188] As regards the evidence of Allan who stated that he built his foundation in about the same area of his grandfather's house, the evidence of Collins clearly contradicts that claim and clearly the foundation was not built in the area of Carolyn's house located on parcel 23.
- [189] As a consequence of the foregoing evidence, the court in review of the conflicting evidence by Allan concludes that the foundation of Allan's house is not on any land handed down from his grandfather Thomas to his father James and that his father James therefore never occupied, planted or possessed land in 9A.
- [190] Accordingly, the claim for prescriptive title on behalf of the estate of James Richardson fails, he never having established the factual possession of 9 A required to prescribe .
- [191] In the absence of cultivation on 9 A, the court saw no act or no or other acts of occupation or possession that would constitute a sufficient or any degree of physical control single or exclusive possession as the evidence for actual factual possession of 9A by James or on behalf of his estate.
- [192] The court accordingly declines to make an order for prescriptive title in favour of the estate of James Richardson in respect of claim 9 A

8. Claim No. AXAHCV2010/0077: Estell Hughes for the estate of Samuel Benjamin Richardson v Benjamin Wilson Richardson et al :

- claim 30 -measuring 1.04 acres

Evidence for the appellant

- [193] Estell Bernadine Hughes (Estell) granddaughter of Samuel Benjamin Richardson (Samuel) and his wife Anesta (who both died in 1974) gave evidence in support of this claim. She stated that the house built by her grandparents was a small wooden house with no kitchen or bathroom or running water and electricity and that they used the bush as a privy. Her evidence is that the house was destroyed by hurricane in 1995, leaving the foundation comprising 4 concrete pillars standing, two of which pillars Estell accuses Benjamin of removing.
- [194] Estell asserted that both her grandparents worked on the land cultivated portions around their house, making brooms from thatch and mauby drinks from the barks of trees. They made mats from corn strips but conceded on cross examination that Samuel was blind and that mainly Anesta worked the land around their house. Estell agreed that her grandmother did not cultivate 1.04 acres and she stopped cultivating many years before she died sometime in her 70's. She (Estell) did not know exactly how much land was cultivated, suggesting about 1/2 - 3/4 acre. However little to no cultivation was done after their deaths.
- [195] Estell stated that after her grandparents died the house was rented and she received rental income until the hurricane blew down the house in 1995. It was never rebuilt. She stated that her grandparents raised sheep and goats on the land and never paid rent. Her grandfather was No. 30 of the listed persons and occupied the land as owner by way of cultivation. She asserted that the land is now registered as parcel 219 was transferred and sold in 1990 and again in 2001 to Anne Considine and Robert Considine.
- [196] Estell clarified that it is correct Oliver Madonna pointed out Samuel's land to the surveyor in 2010, but that she was present. She agreed that the land she was claiming is the Richardson's land and should be divided for the Richardson's. She further stated that she claimed the land on behalf of Samuel as his heir. Estell apparently knew nothing about the consent order of 1983 and of her right to put a claim before the Registrar of Lands in 2010.
- [197] Valma Harris (Valma) Estell's cousin gave evidence in support of this claim by as an heir of Samuel. Valma asserted that her mother's house was opposite that of Samuel. Valma gives a similar description of the house and cultivation by Samuel and his wife and its destruction in 1995 and explains that there were no walls between the lands.

[198] Leonard Richardson (Leonard R) Estell's cousin and grandson of Samuel and Ernesta also gave evidence in support of this claim and stated that he lived with his grandparents until their deaths in 1974. He too gave a similar description of the house and cultivation by his grandparents. He claims to have assisted them in raising crops and animals on the land which they did all their lives and his information is that Samuel died at the age of 85 years. He too confirmed that there were no walls or actual boundaries between the lands and the neighbours. The court noted that save for evidence of cultivation around the house during the lifetime of Samuel and his wife Anesta, there is no evidence that any one continued cultivation on the land after 1974.

Evidence for the respondents nos.1-5 and 7

[199] In his evidence Benjamin denies removing the 2 pillars from the land. Benjamin objects to this claim on the basis that Samuel and his wife only cultivated around their house and not all the land that is being claimed. He accepted that the house was rented just after the deaths of Samuel and Anesta and admitted that he transferred and then sold the land.

Site visit

[200] The site visit revealed the two (2) remaining stone pillars of the foundation, save for that, the court saw no evidence of other occupation and the property appeared to have been abandoned for a long time.

Analysis of the claim on behalf of the estate of Samuel Richardson

[201] At the site visit the court observed the quiet emptiness of the land claimed, was struck by the obvious desertion, abandonment, lack of occupation and desolation of that land. The court certainly could not be persuaded that the presence of the two (2) remaining pillars without more can in any way amount to a sufficient degree of physical control of the land to establish the factual possession necessary for possession.

[202] The evidence is that Anesta worked the land around their house, but the facts are that her grandmother did not cultivate 1.04 acres which she stopped cultivating many years before she died sometime in her 70's and she (Estell) did not know exactly how much land was cultivated, suggesting about 1/2 - 3/4 acre. However she conceded that little to no cultivation was done after their deaths.

[203] The court could see no evidence of any other physical act or activity for example fencing or an attempt to reconstruct the house from which ownership or occupation can be deduced or an intention to exercise custody and control on behalf of the Heirs of Samuel Richardson.

[204] The court prefers to accept the evidence of Benjamin and Estell that Samuel and his wife only cultivated around their house and not the 1.04 acres of land that is being claimed. The court has perused Rads and has observed that unlike the other claims in these proceedings, there is no indication on the plan of any structure or house, nor the two (2) remaining pillars belonging to Samuel Richardson except the area of land being claimed.

[205] However Benjamin admitted in evidence that Samuel had a house on the land, was a listed person and as stated in his statutory declaration dated 28th May 2010, the listed persons are entitled to the land immediately around their homes amounting to no more than 1/2 acre. The court however is faced with a dilemma in that the claim before it is for **1.04 acres** and not for **0.50 acres** and the whole of the 1.04 acres is objected to by Benjamin.

[206] So despite Benjamin's evidence that as a listed person the heirs of Samuel are entitled to 1/2 acre around the house, that notwithstanding, the court can give no effect to that concession as there is no measurement shown on Rads or even its location.

[207] In the circumstances the court must decline to make an order for prescriptive title in favour of the estate of Samuel Richardson in respect to claim 30.

9. Claim No. AXAHCV2010/0070; Carolyn Richardson qua Administrator of the estate of John Samuel Richardson v Benjamin Wilson Richardson et al :

- **claim 7A -measuring 2.44 acres (Kanuka)**
- **claim 7B measuring -1.33 acres including house on 0.5 acres- parcel 7**
- **strip in the Forest Bottom 3161-3165**

Evidence for the appellant

[208] Carolyn Richardson (Carolyn) daughter of Samuel Richardson (Sam) makes the claims on behalf of Sam's estate. With respect to 7 A, Carolyn stated that Sam lived all his life in his house until his death at aged 88 years in 1989. Carolyn argues that Sam cultivated the land around his house and at the back of his house and the area of land is more than the 0.5 acres that Benjamin has conceded for parcel 7.

[209] Carolyn asserted that Sam was a Richardson and he was born on the land and has a right to live there and cultivate because he is an heir. She contended that it was known that this was Sam's land, no one attempted to remove him and he cultivated the land for many years until his death. Carolyn insists that Benjamin has not taken account, Sam's cultivation in the amount of land that he has

conceded. Sam, she asserts, was on his land for well over 12 years and controlled it as if he were legal owner.

[210] With respect to 7 B Carolyn states that Sam cultivated land to the south of Parcel 1 with corn, cassava, potatoes and so on, grazed his animals and cleared the bush to use as thatch for brooms. She describes the boundaries of the land and stated a track was cut between Sam and Collins' land and although there were no physical boundaries 'people respected each other's boundaries'. Carolyn says that Sam occupied and cultivated his land for over 12 years without interruption.

[211] With respect to the strip in the Forest Bottom, Carolyn stated that Sam cultivated a strip there alongside Nerrie and Collins. There were no fixed boundaries save for tracks and rows of peas. Sam occupied all the land claimed and he came to the land peaceably as it was his birth right and was in possession of this land for excess of 12 years and never paid rent.

[212] Carolyn is aware that the dispute as to ownership of Parcel 1 LBE had been going on from 1975 and that Alfred Richardson was representing all the heirs of Abraham Richardson except John Richardson Benjamin's grandfather. Carolyn asserted that all of the family on her side through all the years down to present are firmly of the view that LBE should be divided equally amongst the eight (8) heirs. The claim today on behalf of Sam is based on long possession because Sam lived on that land all his life and from her knowledge of evidence in the courts.

[213] Carolyn admitted that the claim was based partly on long possession and partly on the evidence that his great grandfather owned Parcel 1 and she agreed that some of the evidence was given by Sam which evidence she further agreed will speak more strongly and convincingly than what she says. Carolyn confirmed from the transcript of the Cadastral hearing in 1975 that Sam stated that he left Anguilla in 1924 at aged 22 years and returned in 1970.

[214] In his answers to the Adjudication Officer, Sam stated that he worked the land before he left. He stated that he worked *under the hill about 1/1/2 acres* but Carolyn admitted that she was not claiming land under the hill for Sam. Sam stated that he worked all over Forest Bottom and under the hill and his family cultivated the back parts of Forest Bottom that they wanted to and he admitted that 'under the hill used to be arable but due to drought it is now pasture'.

[215] Carolyn knew that under the hill was the land closest to the sea and stated that she could not speak to Sam cultivating under the hill. Of the strip in the Forest Bottom Carolyn did not know the acreage and could not give the acreage for the land claimed for the house or the piece behind the house either.

[216] Collins Richardson Carolyn's father gave evidence in support of Sam's claim for 3 portions of Parcel 1: Forest Bottom, Red Bottom, Sam's house and around his

house. Collins stated that Sam worked around his house, east and north of his house. Collins did not know the acreage of any of the 3 portions claimed. Of critical importance is a response in cross examination by Collins in these proceedings when he stated that to his best recollection *'by 1975 there was not much cultivation because of drought, that the people who used to cultivate the land they got older and died out', the younger ones went away so very few were left to cultivate*. Collins further stated that *'most of Parcel 1 was lying there empty growing bush'*.

[217] Irada Fleming (Irada) gave evidence in support of Sam's claim. It is his evidence that Sam employed him to work mainly the ground around his home and to the north with Collins' land which included clearing the yard and tending to the area of cultivation. Irada in his statutory declaration stated that he also worked Sam's land in the Forest Bottom but on cross examination in the hearing before the Registrar of Lands, Irada contradicted that evidence and stated that he never worked the Forest Bottom.

[218] Irada stated that he does not know how many acres he cultivated for Sam and does not know how much land Sam was claiming in the proceedings before the Registrar. Before this court Irada stated that he worked for Sam for 3 years but does not know how many acres of land he worked for Sam. Irada also stated that it was not true that Sam only worked around his house.

Evidence for the respondents nos.1-5 and 7

[219] Benjamin confirmed in his evidence that he only saw Sam cultivating around his house and nowhere else.

Site visit

[220] At the site visit Collins contradicted the evidence he gave in the court proceedings. Collins in pointing out on the ground the areas that Sam planted. Collins identified the strip/slip that Sam worked in the Forest Bottom where he stated that everyone had a strip and above his house and back north of his house on top of the hill in the corner. From that statement the court concludes that apart from these 2 areas Sam did not work 7 A and Collins whose own claim 8 A is bounded to Sam's 7 A claim would have known if he did.

Analysis of the claim for the estate of John Samuel Richardson

[221] The evidence is that Sam cultivated areas around his house and to the back of his house and he was one of the listed persons. Caroline, Collins and Irada can only attest to Sam working around his house and in the area north of his house, but cannot say the extent in terms of acreage. Accordingly, the court does not accept Carolyn's evidence that the area of land is more than the 0.5 acres that

Benjamin has conceded for parcel 7 and accepts that parcel 7 correctly reflects the area of land for which an order of title by prescription can be made in favour of the estate of John Samuel Richardson and the court so orders if the register does not already so reflect.

[222] The court declines to make an order for prescriptive title in favour of the estate of John Samuel Richardson in respect to the disputed area in claim 7 B as he had no actual possession of that land.

[223] Sam's own evidence at the cadastral hearing in 1975 is that he worked all over Forest Bottom and under the hill. Sam himself did not give any evidence that he worked in the area of claim 7 A or lands in the Red Bottom and certainly Sam's evidence of where he worked would be the best evidence before the court. Irad in his evidence stated that he also worked for Sam *'further south towards Fleming's land'* but there is no evidence before this court which identifies the location of 'Fleming's land'.

[224] In respect to the Forest Bottom the evidence is that Sam cultivated a strip there alongside Nerrie and Collins, no fixed boundaries save for tracks and rows of peas and according to Sam he worked all over the Forest Bottom. The court's view of this evidence is that it does not signify the appropriate degree of physical control necessary to constitute factual possession and certainly cannot be considered 'single or exclusive'.

[225] Furthermore Collins evidence that by 1975 *there was not much cultivation because of drought, that the people who used to cultivate the land they got older and died out and most of Parcel 1, was lying there empty growing bush* is instructive. The court considers this evidence as supporting the court's view that in the absence of cultivation on 7 A, the disputed area of 7 B and the strip/slip in the Forest Bottom (of which the court saw no evidence) the court saw no other physical act from which the court could deduce physical control or Sam's intention to possess these areas in his claims.

[226] Additionally Sam stated that he left Anguilla in 1924 at aged 22 years and returned in 1970. The court computes that Sam returned to Anguilla at age 68 years. In light of Collins evidence that by 1975 there was not much cultivation due to drought, the court is of the considered opinion that it is unlikely that Sam's occupation or possession of the lands in claim in 7 A and the strip/slip in the Forest Bottom met the threshold requirement of 12 years necessary to prescribe.

[227] This court accepts Collins evidence at the site visit as corroborating Sam 's evidence and is persuaded that Sam did not work the area under the 7A claim. In any event on the foregoing evidence , both claims 7 A and the Forest Bottom fail.

[228] The court again respectfully declines to make an order for prescriptive title in favour of the estate of John Samuel Richardson in respect to claims 7A, 7 B (excluding the house) and strip in the Forest Bottom.

10. Claim No. AXAHCV2011/0051: Oliver MacDonna Administrator of the Estate of Jane Rebecca Fleming (Richardson) and Soritha Macdonna v Benjamin Wilson Richardson et al :

- claims 21 A & 22 A measuring 20.97 acres (including houses on parcels 95 and 96 conceded by Benjamin)
- claims 21 B & 22 B measuring 7.51 acres

Evidence for the appellant

[229] Oliver MacDonna (MacDonna) makes these claims on behalf of his mother Soritha MacDonna (Soritha) and his grandmother Jane Rebecca Fleming (Jane) both deceased and filed a statutory declaration on behalf of the estate of Jane as she could have done on the 25th April 1983. He stated that his claim with respect to Jane is for the period 1970's -1980's and asserted that Jane's interest in Parcel 1 is as a birthright. He explained that Soritha derives her interest under Jane although she predeceased Jane.

[230] MacDonna stated that both Jane and Soritha lived in the same area of Long Bay. The land Jane possessed extended on either side of the Long Bay Road. He described in detail the boundaries of claims 21 A & 22 A measuring 20.97 acres on the south side of the road, which included her house and privies and that the eastern boundary comprised piles of rocks. He described also the numerous tracks, water holes, koal keels on the land, trees for making brooms and so on and asserted that Jane planted pigeon peas, corn, cassava, potatoes, yams and raised goats and sheep. He stated also that Jane and Soritha worked the land with other family members.

[231] With respect to claims 21 B & 22 B measuring 7.51 acres, MacDonna again gave a detailed description of the boundaries of the land comprised in this claim and names of the occupiers or persons on adjoining portions of land. He described rock walls which were later used for the construction of the road. The northern boundary is bounded by the sea and the long bay pond is located partly on the northern portion of the 21 B & 22 B claim and a Well seen south of the pond. He explained the reasons for allowing the bush to grow was to provide shade and the wood used for broom sticks for sale as part of a cottage industry. He further stated that Jane had full control of the land which was reserved for cultivation.

[232] Critically as Jane got older her health failed and according to MacDonna she was reduced to using the land around her house right up to her death in 1996 at the

age of 93 years. He asserted that Jane was in possession of all of the lands for excess of 12 years before 25th April 1983 and in the late 1980's Jane was actively in possession of the land as if she had legal title. Both Jane and Soritha lived on the land, but MacDonna does not agree that they only used or worked the land around their houses. He stated that Jane was never part of the 1/4 share and no one ever asked them to leave the land.

[233] MacDonna revealed that he had knowledge of the dispute between Benjamin and heirs of Abraham Richardson and that the land was vested in the estate of John Richardson given that they all knew the heirs shared Parcel 1 by the court order of Joseph J. He had a good understanding of the consent orders which gave Jane the right to apply for an order on the basis of prescription in respect of lands she occupied in Parcel 1. However he explained that his understanding of the orders was that in 1983 it was open to Jane to make the claim for prescription. He stated that the family objected to the Registrar of Lands coming to the land in the late 1980's early 1990's to give the family 1/2 acre of land around their houses because the family cultivated and occupied areas which were not taken into account.

[234] Upon reviewing and assessing the information and documents including the two cadastral decisions and John Richardson's 967 Deed and having done all his research MacDonna stated, that he had come to the view that Benjamin in 1985 was given the right to ownership of the LBE subject to 2 orders of 1982 and 1983 which allows the persons with houses and living on the land to claim portions of the estate occupied by them prior to the 1982/83 decision and present.

[235] MacDonna was referred to his evidence in which he stated " *that he was making the application on behalf of his grandmother as she could have done on the 25th April 1983, this being the relevant date*" and he explained that his understanding was that the orders allowed her to make applications not only up to 1983 but until the time she actually made the claim and denied that application for prescriptive title had to be made for lands occupied up to 25th April 1983. He pointed out that the order gave no specific date by which the claims were to be made. However that evidence was contradicted by MacDonna himself when he asserted that Jane's claims were on the basis of long possession, meaning exclusive occupation as owner **before** 25th April 1983.

[236] In explaining the meaning of 'relevant time' used quite frequently in his evidence, he stated that it meant those times during the 1970's and 80's. MacDonna agreed that in support of his claim for long possession he cannot say that Jane was in exclusive occupation of the 20 acres for 9 decades, but he can say that for as long as he knows himself, Jane was in 'exclusive occupation' of 20 acres on the south side of the road. He asserted that there were no boundaries and no claim made for ownership and Jane treated it as hers.

- [237] On reading Jane's evidence given at the cadastral hearing of the Long Bay dispute in 1975, MacDonna confirmed Jane's evidence that *'she lives on the land, she cultivated the land herself, she cultivated near her house and we used to work the Forest Bottom*. She further stated that she lived there all her life except for 5 months in St Thomas. He agreed that Jane would know what land she occupied. MacDonna agreed that if Jane gave evidence at the cadastral about the land she worked on LBE that is the best evidence of the land she worked. He confirmed that if that is the evidence she gave at the cadastral, he can agree that is her evidence.
- [238] On perusal of Rads at the trial, he admitted that the two (2) houses of Jane and Soritha are shown in a clear area on Rads on the south side of the road and agreed with the boundaries of the claims as set out in Rads. He stated that as regards the 20.97 acres, Jane occupied all this land and cultivated quite alot of this land, but denied that it is only the clear 'unhatched/unshaded' areas near the houses (shown on Rads) that she occupied and cultivated.
- [239] MacDonna totally disagreed that Jane and Soritha never cultivated or occupied the 7.51 acres known as 'under the hill' on the north side of the road. MacDonna agreed that when he read Jane's evidence at the cadastral hearing, Jane did not say that she cultivated land under the hill and admitted that he did not put in a claim for Jane for lands in the Forest Bottom.
- [240] With respect to his claim in 2003 in relation to the ownership of LBE, MacDonna agreed that his claim was based on a Deed found in the archives, by which Margaret Ann Richardson was the owner and that both himself and Soritha would have an interest. MacDonna admitted that no claim was brought for prescriptive title of the 28.84 acres that Jane/Soritha occupied exclusively in Parcel 1 on the basis of the consent order.
- [241] As regards the map to be prepared by the Registrar of Lands showing houses and cultivation, MacDonna agreed that the map that he has seen showing houses C7 correctly reflects the location of the houses, but that he had never seen a map showing cultivation. When shown C4 MacDonna agreed that C4 showed marks indicating structures or houses on Parcel 1 although not so clear and showed four (4) areas of cultivation.
- [242] Critically MacDonna agreed that the two (2) pieces of land claimed for Jane and Soritha are not shown in any of the four (4) areas of cultivation shown on C4 and agreed also that no areas of cultivation were identified within the areas claimed for Jane and Soritha.
- [243] MacDonna confirmed what was shown on C4 and agreed that it bore the date 1978 and that the order dated 9th July 1982 is not a consent order. He agreed that the order referred to the preparation of a detailed map of houses and conceded that C4 does in fact show houses and cultivation. He was shown order

dated 25th April 1983 which he had been referring to in the proceedings and agreed that this order is a consent order in suit 21 of 1977 and accepted that the order says that there is a list of names attached to a plan filed on the 25th April 1983.

[244] In respect to his evidence relating to respondent no. 7 -Temenos LLC, MacDonna admitted that he knew when the respondent no. 7 purchased land contained in the claim. Although his family protested but he admitted that no action was taken against respondent no. 7. MacDonna asserted that the land purchased by respondent no. 7, was land cultivated by Jane and Soritha.

[245] MacDonna insisted that Jane did not know and he did not know whether agents of the appellants accompanied the Registrar of Lands after 1982 to point out areas of cultivation and stated that up to this point in this long dispute he has never seen a plan showing cultivation, but has seen a plan showing houses.

[246] Raymond Edward Richardson (Raymond) gave evidence in support of these claims. Raymond is Jane's grandson and son of Valma Fleming Harris and cousin to MacDonna. Raymond's evidence is that he was born in 1953, came to Anguilla in 1959 and returned to St Martin in 1971 (aged 12 years) and agreed that he lived out of Anguilla for most of his adult life. He remembers from 1959 (aged 6) that Jane occupied from her house down to the sea, having goats and sheep and occupying another area close to the sea called the gap. He remembers taking produce cultivated to St. Martin to sell for Jane between the 1950's and 1970's. He used to help Jane work on the south of the house and at the time there were no roads only tracks.

[247] Raymond recalls planting crops near the pond and there was bush between the pond and the sea which was cut to make brooms and wood and from the pond to the road was mainly bush. Crops were planted on other areas on the southern portion being claimed, there were water holes and bushy areas used for privies. On cross examination Raymond could not say how many acres that Jane cultivated under the hill, but although he stated that Jane cultivated all around her house, he could not state the acreage. He did not agree that save for the cultivation near her house, Jane did not cultivate any other portions of LBE.

[248] Kenneth Macarthur Richardson (Kenneth) MacDonna's 1st cousin and Jane's grandson, gave evidence in support of these claims. From his evidence, between 1969-1981, Kenneth lived in Anguilla for 5 years. He stated that their livelihood was derived from cultivation, tending animals, raising sheep and goats and making brooms. They earned some money from the sale of crops and brooms and from age 7 years he sold the brooms and mats and some of the food in St. Martin.

[249] Kenneth could not state how many acres of land Jane cultivated because it was never measured. He agreed that Jane cultivated near her house but again could

not state how many acres. He did not agree that Jane did not cultivate any areas of LBE other than near her house. He stated that they cultivated under the hill and in the bushes south of the house.

[250] Arthur Edmostin Fleming (Arthur) gave evidence in support of these claims and stated that Jane is his mother. He was born in 1933, grew up on the land until he left for England when he was 26 years old (1959) and returned to Anguilla in 1987 and returned again finally in 1988. He asserted that he knows all the 'pieces' of land that Jane occupied. He recalls two (2) major pieces of land where planting took place were around the house and under the hill where Jane grew crops like peas potatoes and corn.

[251] Arthur stated that he lived with Jane and recalls the yard littered with broom sticks and thatch and taking the animals to graze in the day and tying them at night. He recalls picking peas and scraping Mauby bark to make drinks to sell in St Martin and St Kitts. He asserted that Jane paid a large amount in taxes according to the size of land she occupied, but the court saw no evidence of the taxes paid by Jane.

Evidence for the respondents nos.1-5 and 7

[252] Benjamin gave evidence for the respondents and having been shown the transcript, Benjamin recalled saying in his evidence before the Registrar of Lands that his father Wallace worked several areas on the land on Parcel 1. He recalled saying also that he did not think his father was the only person cultivating and that other people were cultivating 40 years ago. He stated further that his father did not limit himself to cultivating just around his house but the others who cultivated did. He insisted that only his father cultivated outside of and around his house and that he was telling the truth when he said that those other persons cultivated only around their houses.

[253] Benjamin recalled other persons who worked the land around their houses 40 years ago including Jane, but said he had no knowledge of Jane working the Forest Bottom. Benjamin admitted saying to the Registrar that he never cultivated in the Forest Bottom. He stated that everybody cultivated the land in much the same way, digging with a pick and a hoe and planting. Benjamin recalled other persons including Collins and Jane.

[254] Benjamin's understanding is that Abraham Richardson was the first in the family to live on Parcel 1. He could not recall his father's age or the year he was born. He was not aware of any court action taken to remove the heirs of Abraham from Parcel 1 before the cadastral, or by anyone acting for John Richardson. Benjamin admitted that he never took any action to remove any of the heirs of Abraham Richardson from Parcel 1 and he did not file any action.

- [255] Of claim 23 of 2009 Benjamin admitted that he brought that action for an injunction against several of the appellants for trespassing on Parcel 1 and stated that since the order of Joseph J. was upheld by the Court of Appeal, the land belonged to the heirs of John Richardson. Benjamin could not remember whether he told the court in the injunction application whether he had consented to a 1983 order that allowed persons to put in their claims for long possession.
- [256] On reading his evidence Benjamin recalls the hearing before the Registrar in 2010 where he stated that he cultivated land close to where he lived, back and front of his house but that he has not cultivated in 30 years. On Rads Benjamin clarified for the court the location of his house on parcel 91 and confirmed that the area that he referred to before the Registrar on 29 and on which he cultivated is 'unclaimed'. He denied that he cultivated land owned by Varian Davis, Mabel Richardson or being claimed by Jane.
- [257] Benjamin admitted that Doris Bryan cultivated land for about one (1) year after the order of Joseph J. and that she ploughed an area in the narrow strip comprising the area claimed by Eneria Richardson. He agreed that he did not put her off the land. He did not agree that in cutting the buffer road he destroyed the crops planted by Doris and Collins. He stated that he cut the road about 2001/2002.
- [258] An explanation of the comment made by Benjamin in paragraph 17 of his witness statement was raised by counsel for the appellants. Specifically Benjamin was asked to explain what he meant when he stated in referring to Hubert Hughes (Hughes): ' ... *his knowledge of what transpired at the time he consented to the 1983 consent order was not based on information received but on actual knowledge of the fact of what was agreed*'.
- [259] Benjamin advanced an explanation that he agreed that they had houses and the lots around them and 'further stated ' *that in fact (Hughes) consented on behalf of the heirs of Abraham Richardson that they were to claim by prescription, title to the areas of land on which their houses were built.*' In response to the suggestion that Hughes was not present at the making of the consent order in 1983 and that in fact he did not consent to the order on behalf of *heirs of Abraham Richardson*, Benjamin stated that as far as he could remember and it is his belief that Hughes was there and that it is not true that Hughes did not consent.
- [260] Benjamin clarified that at the time the application for the 2009 injunction was filed at least six (6) persons had filed their claims.
- [261] The evidence of Robert FX Sillerman, Director of Temenos Realty LLC was given on behalf of the 7th respondent by way of Witness statement dated 15th October 2012 by which witness statement he adopted and relied on the contents of the

witness statement of Benjamin Wilson Richardson (Benjamin) dated 12th October 2012.

Site visit

- [262] MacDonna gave evidence at the site visit. In respect to claims 21 A and 22 A, he pointed out the location of his family houses. He stated that the area around one of the houses was fenced but not sure when it was fenced probably late 1980's to early 1990's - in any event after the relevant date. MacDonna agreed that the fencing was within the boundaries of parcel 96 on Rads and is uncontested. Only one of the two (2) houses was seen on the parcel 94 and 95 and court was informed that Jane's house was removed by the family.
- [263] The court observed no fencing of that entire land other than parcel 96 and no real physical markings or demarcation of the boundaries. There is no evidence of any or any continuing cultivation which Macdonna states ceased in 1991. No evidence of current grazing of any animals which ceased by Jane about 1993. The court saw evidence of tracks but no evidence of numerous water holes or, koal keels on the land, trees for making brooms and so on that Jane allegedly planted including pigeon peas, corn, cassava, potatoes, yams and raised goats and sheep. He stated also that Jane and Soritha worked the land with other family members.
- [264] MacDonna pointed out areas of arable land where his cousin Kenneth used to plant. There were areas planted with trees and thick bush and MacDonna stated that they discontinued the use of privies from 2009. He pointed out areas of the pea ground which is covered with bush. There is no evidence of a road cut on the land in the area near the eastern boundary which is covered with thick bush. Court observed areas outside the fence which MacDonna stated was cleared for planting. However Benjamin denied that was so and explained that it was recently cleared by Terrence Fleming and he told him that he should stay within his boundary but Terrence indicated that it was cut to get a view of St. Martin.
- [265] With respect to claim 21 B and 22 B, MacDonna pointed out the boundaries of all land in both claims and areas on which crops were planted in the largest part of the ground. The area where the pond is located was seen but no longer used for water to feed animals. Areas were shown, mainly bush, which could be used for thatch for brooms but no evidence that any of that continues to date. Planting was reduced in the late 1980's and MacDonna showed the original track leading to the land.
- [266] Benjamin denies that MacDonna cut a road in February 2009 on the eastern boundary and court saw no sign of a road clearing. The Court was shown the supposed initial track leading to all the land. Benjamin stated that he is much older than MacDonna and has never seen any cultivation in that area and denied that this was the initial track to the lands. He insisted that MacDonna used a

backhoe to cut the track after the dispute started. The area is generally covered with thick bush and the court observed no activity on the land.

Analysis of the evidence for the claim for the estate of Jane Rebecca Fleming (Richardson) and Soritha MacDonna

- [267] MacDonna stated in his evidence by way of statutory declaration that his claim in respect to Jane's estate is for the period 1970's -1980's and again confirmed that for him the relevant time during which the claim for long possession is made is the period between the 1970's and 1980's. MacDonna explained in these proceedings that Jane's claim is on the basis of long possession, meaning exclusive occupation as owner before 25th April 1983. The court accordingly considers the period under consideration between 1970 -1983 in respect to this claim.
- [268] In her evidence before the cadastral in 1975, Jane stated that she lived on the land, she cultivated the land herself, she cultivated near her house and that we/she used to work the Forest Bottom. She further stated that she lived there all her life except for five (5) months in St. Thomas. MacDonna conceded that Jane's evidence at the Cadastral is her evidence and the best evidence of the land that she worked. That evidence clearly materially contradicts the evidence in support of these claims given by MacDonna, Raymond and Arthur and is totally consistent with the evidence given by Benjamin in these proceedings.
- [269] MacDonna in his evidence established the period for which the court should consider the claims and this court is satisfied from the evidence for the relevant time 1970-1983, that Jane would have established her possession of the house lot and the area of cultivation near or around her house, conceded by Benjamin and given parcel nos. 94 and 95, together measuring 0.96 acres.
- [270] Furthermore Jane's evidence at the Cadastral in 1975 was that she /we used to work the Forest Bottom and this clearly indicates that in 1975 they no longer worked the Forest Bottom. In any event there is no claim/appeal before this court with respect to lands in the Forest Bottom on behalf of Jane's estate.
- [271] The court saw no evidence of any past or abandoned cultivation or any current or continuing cultivation on any of the lands claimed. The court saw no evidence of current grazing of any animals. The court saw large areas of bush and trees which MacDonna explained was allowed to grow to provide some shade, but the court certainly saw no evidence that the bush and wood were used or were currently being used for broom sticks for sale as part of a cottage industry.
- [272] The court saw evidence of tracks but no evidence of 'numerous tracks' or 'numerous water holes or koal keels' on the land as described by MacDonna in

his evidence. As a consequence, the court does not accept the evidence that Jane and Soritha ever cultivated the lands comprised in claims 21 A and 22A, 21 B and 22 B.

- [273] The court gives little weight to the evidence of Raymond and Arthur relating to the areas or occupation or cultivation by Jane as they both lived outside Anguilla at the relevant time and therefore could give no evidence that the court considers relevant in respect to claims 21 A and 22A, 21 B and 22 B. The court however accepts the evidence of Raymond, Kenneth and Arthur as corroborating the evidence in respect of Jane's factual possession of the land upon which her house is built which is 'single and exclusive' and evidence of her intention to possess that house and curtilage.
- [274] Despite that evidence from Jane at the cadastral hearings in 1975 in terms of the areas that she worked or cultivated, the court sought to assess the evidence that could substantiate occupation or possession of the lands claimed by MacDonna on her behalf during the period of and past the relevant time. The evidence in that regard was non-existent. The court saw absolutely no evidence of other physical acts such as fencing of those lands (other than parcel 95 & 96) and no real physical markings or demarcation of the boundaries or other acts of physical control or occupation sufficient to constitute the physical custody and control of the lands claimed.
- [275] As a consequence of the evidence given by Jane at the Cadastral and evidence of MacDonna in these proceedings and in particular his statement that he filed no court action against the respondent no. 7, the court is persuaded that the land purchased by the respondent no. 7 parcel 238, does not form part of lands near the houses of Jane and Soritha comprised in parcels 94 and 95 and accordingly not within the claims for Jane.
- [276] In short, there was no evidence whether current or past or abandoned or imagined or otherwise, from which the court could deduce occupation, control, and physical control with any degree or sufficient degree to constitute actual or factual possession, far less the requisite intention to possess these lands by Jane at any point in time. The court is therefore forced to conclude that those lands comprised in claims 21 A and 22A, 21 B and 22 B were never part of the lands in the sight or contemplation of Jane or Soritha at the relevant time or at any point in time.
- [277] In the circumstances this court declines to make an order for prescriptive title in respect to the lands comprised in claims 21 A and 22A, 21 B and 22 B (excluding parcels 95 and 96) in favour of the estate of Jane Rebecca Fleming (Richardson) and Soritha MacDonna .

11. **Claim No. AXAHCV2010/0079: Robert Austin Richardson Administrator of the Estate of Eneria Richardson v Benjamin Wilson Richardson et al :**

- **claim 12 B measuring 0.74 acres (Under the Hill)**
- **claim 12 A measuring 9.76 acres (house lot measuring 0.5acres-parcel 20)**
- **strip in the Forest Bottom measuring approximately 2 acres**

Evidence for the appellant

[278] Robert Austin Richardson (Robert) makes these claims on behalf of the estate of Eneria Richardson (Eneria) his deceased mother. Robert recalls that in the early 1950's his mother was responsible for 10 children. Robert stated that he remembers his parents occupying and using the land, cultivating and farming as was the tradition then. His father and after his death his mother, cultivated large acreage of crops on the land because in those days the land was their main source of income. Practically all the north side was cultivated as land was very fertile. They raised mainly cows, goats and sheep.

[279] The claim comprised three (3) portions of land as follows: (1) **claim 12 B** measures 0.74 acres grew crops and grazed cattle on that land. A well is located on the land in this claim which was used to water the crops and for animals. They made water holes out of rocks and described the land in this area as flat and fertile and ideal for planting crops and located near the sea (2) **claim 12 A:** measures 9.76 acres. Land in this area is rocky to the north which was planted with pigeon peas and on which sheep and goats were grazed. The area included a portion known as 'long ground' which was good for planting cabbage and pigeon peas and included area around the house where they planted various crops and (3) **A strip** in the Forest Bottom described as good for planting crops such as corn, potatoes and pigeon peas.

[280] Robert's father died in 1960/1962 and when his father was alive Eneria worked with him cultivating the land side by side. His parents did not need permission to use the land, they paid taxes until it was stopped due to the revolution. His mother never paid any 1/4 sharing to anyone. The land had no boundaries as they never fenced, but they simply knew where limits were by rock walls ridges, trees, a track between lands and so on. They simply respected each other's boundaries and never encroached on each other's land.

[281] Robert stated that Eneria made all decisions about the land and she had to give permission to her nephew Euston to build on her land as she controlled her land as if she was the legal owner. Robert asserted that Eneria possessed and occupied the land uninterrupted. She continued to cultivate and her children shared the work with her until the court order in 1983 and until her death in 1989.

- [282] On cross examination Robert stated that he lived out of Anguilla for 9 years from 1956 to 1965 and admitted that he lived between Anguilla, St Thomas and England until 1968 and returned from England permanently in 1982. He stated that he was making the claims on behalf of Eneria as she could have done back then. Eneria occupied the land in 1983 and wants this claim to be treated as an application made by Eneria in 1983 as that was the time Eneria was occupying the land.
- [283] Robert stated that the basis of the claim for Eneria is that she was married to James Matthias, grandson of Abraham Richardson and he used to occupy the land and after his death Eneria continued to cultivate. When he gave evidence at the cadastral he considered Abraham to be the owner and if successful in the dispute according to his will his eight (8) children would share equally. That was his position in 1975 but he conceded that he would have to go along with the decision of Joseph J. which said that heirs of John Richardson owned the estate.
- [284] Robert denied that after the decision of Joseph J in 1985, he and the other members of the family stopped using the land, but conceded that he made that statement in his Statutory Declaration in 2010. He agreed that after the decision of Joseph J. in 1985, Benjamin brought actions against several persons including him to stop occupying the land and in any event his mother could not have occupied until her death uninterrupted because of the actions brought by Benjamin in 1985. He agreed that Eneria occupied until 1975 undisturbed and she would have been entitled to the land by long possession up to 1975.
- [285] Robert disagreed that the other heirs of Abraham Richardson would not be entitled to the same land. He asserted that Eneria cultivated and occupied the vast amount of land claimed and disagreed that she only occupied areas immediately and around her house.
- [286] Violet Richardson (Violet) daughter of Eneria gave evidence in this claim on behalf of estate of Eneria Richardson. Violet stated that she was born in 1937 grew up with Eneria at Long Bay and her parents had 10 children all born before 1955. She stated that they all helped their parents cultivate on the land where their house was and on the whole estate did crop rotation all over the land worked and planted on the areas under the hill near the sea and planted potato and peas on the strips at the bottom. She stated that Eneria planted from 1940's to part of 1980's. They also cut thatch for broom sticks and mats which her father sold in St. Martin.
- [287] Violet did not know the area of lands cultivated by Eneria under the hill and at the Forest Bottom. Violet stated that she knew about the dispute before the cadastral in 1975 between Abraham Richardson's family against Benjamin who was claiming that Parcel 1 belonged to his grandfather. She stated that Eneria was married to a grandson of Abraham Richardson and she sided with the position

that the 8 heirs of Abraham Richardson owned the land. She stated that her mother died in 1989.

[288] Violet was shown her witness statement where she said that Eneria planted part of 1980's. Violet recalled Eneria gave evidence in 1975 before the cadastral and asserted that she would accept any evidence Eneria gave as correct if coming from her. The evidence is that at the cadastral hearing in 1975, Eneria admitted that she last worked the land in 1962 when her husband drowned and before she went to England. Eneria stated that when Benjamin bulldozed her thatch on the land, her source of living, that was the end of her living.

[289] Violet agreed that Eneria stated she last worked the land in 1962 and Violet agreed that her father drowned in 1962. Despite that admission Eneria accepted that Eneria could not have been working the land whilst she was in England in the 70's and 80's and interestingly she disagreed that both her parents stopped working the Long Bay Estate in 1962 and that in fact neither of her parents could have worked the land in 1970-1980. Violet was unable to identify on Rads nor was she able to describe the claim in the strip. Violet stated that there was cultivation on the 'red' bottom but there was no claim in these proceedings for lands in the 'red' bottom.

Evidence for the respondents 1-5 & 7

[290] With respect to the claim for Eneria's house and curtilage, Benjamin states that as a listed person, Eneria is entitled to house lot 12 and she is the registered proprietor of parcel 12. Benjamin disputes the claim 12 A and the claim in the Forest Bottom. Benjamin asserts that Eneria's evidence before the Adjudication Officer in 1975 was based on her husband being an heir and not by long possession.

[291] Benjamin admitted in cross examination that he was negotiating to sell the whole of the land from east and down to the west end and north of the old road. He admitted to a few sales and that he was negotiating to sell all the portions to the east of that line going north from IB, 6C including areas under claims 19, 6 B and 26. Benjamin advised that he was no longer proceeding with the negotiations.

[292] Benjamin agreed to transfer parcel 12 measuring 1.33 acres to the estate of Eneria Richardson and conceded the 1/2 acre where Euston's house is built on parcel 18.

Site visit

[293] Violet gave evidence in this claim at the site visit. She identified the claim for Eneria as the portion in the red bottom. She showed the location of Eneria's house and Eustons's house which is not shown on Rads. She pointed out the

area where Eneria planted in the long ground and stopped in 1988 and in claim 12A, which was taken over by Doris her sister and bulldozed by Benjamin in 2002. This land is no longer cultivated.

Analysis of the evidence for the claim for the estate of Eneria Richardson.

[294] Robert stated that this claim is to be treated as one made by Eneria in 1983 as that was the time Eneria was occupying the land. He stated that Eneria possessed and occupied the land uninterrupted and continued to cultivate with her children until the court order in 1983 and until her death in 1989. He however contradicts his evidence when he stated that Eneria would have been entitled to the land by long possession up to 1975.

[295] Robert admitted that he was out of Anguilla from 1956 and lived between Anguilla, St Thomas and England until 1968 and returned from England permanently in 1982. As such, at the crucial time at which he must make the case for Eneria's 12 years continuous possession from 1983 going back, Robert was not living in Anguilla. In the absence of evidence that he travelled back and forth to Anguilla after 1968, the court holds the view that Robert is not in a position to attest to Eneria's cultivation or possession of the lands claimed at the material time.

[296] The evidence before the court is that their father died in 1962 and that Eneria stated that she last worked the land in 1962 after her husband drowned and before she went to England. Violet asserted that Eneria planted from 1940's to part of 1980's and admitted that Eneria was in England in the 70's and 80's. As such Eneria could not have been working the land during the time she was in England. Notwithstanding that contradiction, Violet disagreed that based on the evidence before the court, both her parents stopped working the LBE in 1962.

[297] Violet did not know the area of lands cultivated by Eneria. Violet and was unable to identify the lands on Rads nor was she able to describe the claim in the strip. There was no evidence before the court of receipts for payment of land tax that it was alleged that Eneria paid a lot of. Violet stated that there was cultivation on the red bottom but there was no claim in these proceedings for lands in the red bottom on behalf of Eneria. Violet described the lands as having no boundaries was not fenced although she spoke of rock wall and trees and tracks and they simply knew.

[298] The court is mindful of Anguillan culture and traditions with regard to cultivation to feed families especially as in this case a family of 10 children. The court however in the absence of clear and convincing evidence of the occupation or cultivation by Eneria for the continuous period of 12 years during 1970 to 1980's and in addition, the evidence of Robert and Violet is not particularly strong, or any current cultivation or actual possession on the ground, other than their

homes, the court cannot make an order for prescriptive title of that claim in favour to the estate of Eneria Richardson.

[299] The fact is even if the court were to consider acts other than cultivation by Eneria, Robert himself admitted that in 1985 he and the other members of the family stopped using the land, there is no evidence of any other acts from which the court could deduce occupation, control, physical control with any degree or sufficient degree, to constitute actual or factual possession, far less the requisite intention by Eneria to possess these lands.

[300] Accordingly the court must therefore conclude that those lands comprised in claims 12 A (excluding the house on parcel 18) 12 B and strip in Forest Bottom, were never part of the lands possessed by Eneria Richardson.

[301] This court therefore declines to make an order for prescriptive title in favour of the estate of Eneria Richardson in respect to claims 12 A (excluding the house on parcel 18) 12 B and strip in Forest Bottom.

12. Claim No. AXAHCV2010/0073: Leslie Richardson Administrator of the Estate of Alma Richardson v Benjamin Wilson Richardson et al

- **claim 1 A measuring 3.08 acres (Kanuka)**
- **claim strip in the Forest Bottom -1.43 acres**

Evidence of the appellant

[302] Leslie Richardson (Leslie) gave evidence in this claim on behalf of the estate of Alma Richardson (Alma). He stated that his family house was built in 1960. He further stated that the Kanuka land was rocky and as a result it could not be ploughed. They used the pick and pointed sticks to plant peas and corn. They also tethered their animals and no other family cultivated in that area claimed on behalf of Alma's estate.

[303] He stated that they used sticks and trees to demarcate the boundaries of the land. His father drowned in 1962 and they had to cultivate the land in order to survive as his father's pension ceased immediately. There were 9 siblings. His parents lived in Long Bay all their lives and cultivated west of their house. After her father's death, Alma carried on cultivating up until Benjamin made it impossible to cultivate in the late 1980's.

[304] With respect to claim 1 A (Kanuka) Leslie stated that prior to her death, Alma cultivated the Kanuka and kept animals in an animal pen made of rocks of the type which were sold for the road construction. Alma planted cassava, potatoes,

corn, beans and so on and her children helped her to plant and scraped sisal to make ropes. They also kept koal keels on this claim.

[305] With respect to the strip in the Forest Bottom, this was the prime area of cultivation by Alma and where she grew all types of crops including yams, potatoes, corn, cabbages and so on. Animals were also grazed in that area. According to Leslie, Alma remained in control of the lands and her children helped her to cultivate as it was vital to feeding them. She never paid rent and she possessed the land for over 12 years prior to 1983 and until her death in 1987, uninterrupted and made all decisions about the lands. No one tried to take it from her and he stated further that there were no physical boundaries except for a track between the neighbours.

[306] Leslie asserted that when his mother cultivated, she was cultivating as being married to his father an heir of Abraham Richardson. He agreed that his mother was cultivating undivided estate property.

[307] Leslie stated that he is aware of the litigation involving LBE now being claimed for all the eight (8) heirs of Abraham Richardson and that he was not aware that his mother took a different position. He agreed that when his mother spoke of Parcel 1, it included the land his mother and the others are claiming. Leslie asserted that he became aware of the consent order about two to three years ago. Leslie agreed that he was also aware that in the 1980's there was some arrangement whereby persons entitled to land would be able to claim it. Leslie continued to assert that his mother cultivated around her house and in the Forest Bottom prior to her death eight to ten years ago.

[308] Leslie did not know whether his mother put in a claim in 1975 for ownership of the land because between 1973 -1976 he would have been off island. He admitted he knew Benjamin is not objecting to the land area around their house and stated that lot 1A was last cultivated about 1977 and 1979.

Evidence for the respondents 1-5 & 7

[309] Benjamin maintains that Alma is only entitled to the house lot and curtilage measuring 0.5 acres and registered as parcel 22. Benjamin remembers that Alma's husband Alfred Richardson worked a small portion around the house which is included on parcel 22. He stated that he knew Alma very well and he was in and out of her yard almost every day.

[310] In his evidence before the Registrar of Lands Benjamin objected to the claim for lands in the Forest Bottom and Kanuka. Benjamin insisted that the only persons that he knew cultivated lands outside the curtilage of their houses were Florence and Doris.

Analysis of the evidence for the claim for the estate of Alma Richardson

- [311] Leslie's parents Alma Richardson and Frederick Richardson built the family house on Parcel 1 in 1960 and during their lifetime they cultivated the west side of their house. Benjamin remembers that Alma's husband Alfred Richardson worked a small portion around the house which is included in parcel 22 already registered in Alma's name. As indicated earlier the court will not disturb that finding of prescriptive title made in favour of the estate of Alma Richardson with respect to parcel 22.
- [312] With respect to Lot 1 A and the Forest Bottom strip, the court had an opportunity to observe the general area where the claims are located. The evidence before the court was that Alma made all decisions regarding the lots, no one tried to take them from her and she gave permission to family members to cultivate. Importantly there were no physical boundaries but yet Alma remained in control of the land which she possessed for over 12 years prior to 1983 and until her death in 1987, uninterrupted.
- [313] The court is not persuaded by Leslie's evidence without more, that the threshold requirements for prescriptive title have been met. In addition the court is unable to reconcile the conflicting dates given throughout Leslie's evidence of the details surrounding the lands.
- [314] Finally the court has taken note of Leslie's evidence where he states that Lot 1 A was last cultivated in 1977 and 1979 with no current cultivation and no evidence of past cultivation. In the absence of cultivation the court saw no evidence of any other act done on the land in the area of the strips from which the court can deduce sufficient degree of exclusive physical control by Alma or the estate of Alma or from which an intention to possess can be deduced.
- [315] The court is mindful of the explanation given by Cleveland Richards on the site visit in 2015 with respect to the Forest Bottom claims in which he stated that at the time of survey in 2010, appellants pointed to areas where they generally cultivated in the past but could not physically identify the specific areas cultivated. There was no evidence of cultivation by the appellants in 2010 or 2015.
- [316] The court considered joint possession of Forest Bottom claim and also claim 1 A but dismissed same as Leslie's evidence did not lend itself for the court to even address the possibility.
- [317] Accordingly this court declines to grant an order for prescriptive title in favour of the estate of Alma Richardson in respect to Lot 1 A and the strip in the Forest Bottom.

Evidence of Hubert Hughes

- [318] The court has taken excerpts from the evidence of Hubert Hughes former Chief Minister of Anguilla in dealing with exhibits previously admitted in the proceedings.
- [319] Hubert Hughes (Hughes) was called as a witness for the appellants and he made his intentions very clear from the outset as set out in paragraph 9 of his Statutory Declaration in which he states that he wishes it to be known as he shall demonstrate within this his statutory declaration that Benjamin/Wilson is once again seeking to mislead this Tribunal for his own advantage and to skew the truth".
- [320] Hughes proceeded to identify instances that Benjamin sought to mislead for example claim AXAHCV 2009/23 in which Benjamin sought injunctions against the appellants for trespass on LBE and failed to disclose to the court that his title was subject to the rights of the appellants to apply to the Registrar of Lands for prescriptive title to certain portions of LBE (Parcel 1) pursuant to a 1985 Order of Joseph J. Upon the court becoming seized of that information the interim injunction of Michel J. was discharged.
- [321] Hughes represented the current appellants heirs of Abraham Richardson at the hearing in Suit 21 of 1977 before Joseph J. in November 1984 and in his Statutory Declaration in this current proceedings, Hughes denied any knowledge of the 1983 consent order and 1982 order and also denied Benjamin's assertion that he had *an understanding of what was agreed to in the signing* of the 1983 consent order.
- [322] On cross examination Hughes was forced to recall deposing to an affidavit in suit 49 of 1990 in which he stated that Benjamin had agreed *that persons 'would receive their homes no matter the outcome of suit 21 of 1977, a clear contradiction of his evidence that he knew nothing about that statement. Despite that statement which Hughes agreed he did say, Hughes' assertion is that he certainly never agreed that claims should be restricted to just house lots was unbelievable. Hughes intended to rely on aerial photographs taken at the cadastral survey for 1968 and 1991 which photographs showed 'large tracts of cultivation' for the years 1968 and 1991.*
- [323] Hughes stated that Cecil Niles (former Registrar of Lands) never sought to prepare the detailed map showing houses and cultivated areas in compliance with the 1982 order but only a map showing the houses only. Hughes denies any knowledge of the making of the orders and considers any statements to that effect false and once again Benjamin is misleading the tribunal.
- [324] Hughes stated that Benjamin is trying to persuade the tribunal that Hughes agreed that the appellants were only entitled to the land on which their houses

were built. Hughes believes that Benjamin is motivated to limit the claims to house lots only because of the agreement he has entered into for multimillion dollar developments which will be affected if the appellants are granted title to some of the parcels.

[325] Hughes referred to an affidavit filed by Benjamin dated 6th March 2009 which for Hughes provides proof that Benjamin is aware that the appellants are entitled to portions of land in Parcel I, other than just house lots.

[326] He proposed that 1982 and 1983 orders of Joseph J. do not place any limitation on the claims. Hughes stated that at no time did Niles ascertain from the persons occupying Parcel 1 where they cultivated the land. No map was ever prepared by Niles showing cultivation. Further he says, Niles did not consult with any of the appellants, nor were application received by the Registrar. Hughes questions the reliability of a map showing houses with 1/2 acre lots only, (C7) where proper procedure was not followed and suggests that it ought not to be followed.

[327] After leaving office Hughes alleges Niles was employed by Benjamin and this he declares is an indication of continued bias by Niles against the appellants and that through his actions (including refusal to place cautions) and decisions, Niles was always supportive of Benjamin's side. Equally Hughes accuses Gifford Connor (Registrar of Lands) of having a conflict of interest and showing bias towards the appellants. Hughes continues to question the validity and authenticity of the plans prepared by Niles (C7).

[328] Hughes denied that he was a party to the 1983 consent order and stated he got involved in suit No. 21 of 1977 proceedings in November 1984.

[329] On cross examination of the contents of **his** Statutory Declaration, Hughes was first reminded that he had just said in the court that he had no knowledge of the consent order as he was not involved and not a party to it and had become aware of it many years later. Counsel referred the following to :

Paragraph 18 of Hughes' Statutory Declaration in which Hughes referred to "an order directing the Registrar of Lands (Mr. Cecil Niles) to draw a detailed map showing the houses and cultivation" and paragraph 17 he in fact stated that the order was a 1982; order (not a consent order). This was in direct contradiction of Hughes' evidence and proof to this court that Hughes is not a truthful witness as he did know all about that court order when he became involved in the case in 1984.

[330] Hughes was asked whether he represented or conducted the case for the heirs of Abraham Richardson, not as a lawyer. Hughes was referred to the transcript of the suit 21 of 1977 proceedings in November 1984. Hughes was referred to the commencement of the proceedings where he replaced the previous representative and the order was made by consent of Hughes and Mitchell by

which order exhibits C1-C11 were admitted by consent, in particular C4 photogrammetric plot and C7 double plan sheets;

[331] Hughes conceded that those were exhibits which were put in the hearing before Joseph J. in Suit 21 of 1977 and accepted that he had in fact seen these exhibits before and before they were admitted.

[332] Hughes remembered swearing to an affidavit in Suit 49 /1990 dated 29th November 1991 brought by Amos Richardson et al against Benjamin and at paragraph 9 of Hughes' affidavit he stated that he believed the consent order referred to by Joseph J. and by the defendant in paragraph 14 of his affidavit related to the consent of the plaintiff in suit 21 of 1977, that he agreed that no matter what the outcome of the case, that persons would be entitled to the areas of land on which their homes were built. The plaintiff in this suit was Benjamin Richardson.

[333] Hughes was referred to C7 and he confirmed that the squares marked in red are the house lots of the persons living on LBE at the time that he conducted the trial in 1984. Hughes was asked where in paragraph 9 of the affidavit did he refer to 'cultivation' and he did not respond. Hughes was shown C7 and legend below. Box shows 1/2 acre. He conceded that what he said in his affidavit is that 'persons would be entitled to the areas of land on which their houses were built. He agrees that it meant each house has 1/2 acre for each house depicted.

[334] Hughes agreed that he understood the (consent) order of 1982 directing the Registrar to draw a detailed map. When Hughes was shown C4. He said "I said that Niles never drew that map showing houses and cultivation I see the green area marked on the map -area of cultivation".

[335] The Court is of the view that Hughes' evidence as a witness for the appellants added nothing substantive and did not assist the appellants in their claims. In addition, the various contradictions and inconsistencies which emerged following his cross-examination, only highlighted the weakness of his evidence. It is the court's view that Hughes' attempt to discredit the evidence presented by Benjamin in these proceedings failed.

Conclusion

For the reasons which have been explained in the foregoing, this court finds that the appellants have not acquired ownership to certain portions of Long Bay Estate (formerly Parcel 1) claimed by them, in accordance with the provisions of Section 135 of the Registered Land Act, Revised Statutes of Anguilla Chapter R 30.

The Order of the court is as follows:

1. (1) **Claim No. AXAHCV2010/0069: Collins Richardson v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of Collins Richardson in respect to claims: 8 A, 8 B, 8 C, 8 D, 8E and Various 1 (excluding the cultivated areas - Rads 3152 -3166 /parcel 23 and parcel 8- houses and curtilage conceded by respondent no.1).

(2) **Claim No. AXAHCV2010/0071; Boswell Richardson v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of Boswell Richardson in respect to claim no. 5 (excluding the area of 0.63 acres -parcel 5 conceded by respondent no.1).

(3) **Claim No. AXAHCV2011/0052: Sybil Rhymer Administrator of the Estate of Florence Richardson v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of the estate of Florence Richardson in respect to claim- 14 B and the contested portion of 14A (excluding parcel 14 upon which her house is built, conceded by respondent no.1).

(4) **Claim No. AXAHCV2010/0072: Calvin Richardson v Benjamin Wilson Richardson et al**

(a) On the basis of agreement between the parties at the site visit, this court orders that the 0.70 acres comprised in claim 6A be allotted to Calvin Richardson and that he be recorded as registered proprietor of parcel 6.

(b) This court declines to make an order for prescriptive title in favour of Calvin Richardson in respect to claims: 1 B, 6 C and Various 1 Forest Bottom.

(5) **Claim No. AXAHCV2010/0076; Marge Hughes Administrator of the estate of Evangeline Hughes v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of the estate of Evangeline Hughes in respect to claim 10 A.

- (6) **Claim No. AXAHCV2010/0078; Calvin Richardson Administrator of the estate of Victor Richardson v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of the estate of Victor Richardson in respect to claim 26.

- (7) **Claim No. AXAHCV2010/0081; Royston Richardson Administrator of the estate of James Richardson v Benjamin Wilson Richardson et al**

The court declines to make an order for prescriptive title in favour of the estate of James Richardson in respect to claim 9 A

- (8) **Claim No. AXAHCV2010/0077: Estell Hughes for the estate of Samuel Benjamin Richardson v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of the estate of Samuel Richardson in respect to claim 30.

- (9) **Claim No. AXAHCV2010/0070; Carolyn Richardson Administrator of the estate of John Samuel Richardson v Benjamin Wilson Richardson et al**

(a) If the register does not already so reflect, this court orders that the estate of John Samuel Richardson be recorded as the registered proprietor of Parcel 7.

(b) This court declines to make an order for prescriptive title in favour of the estate of John Samuel Richardson in respect to 7 A, the disputed area in claim 7 B and the Forest Bottom strip.

- (10) **Claim No. AXAHCV2011/0051: Oliver MacDonna Administrator of the Estate of Jane Rebecca Fleming (Richardson) and Soritha Macdonna v Benjamin Wilson Richardson et al**

This court declines to make an order for prescriptive title in favour of the estate of Jane Rebecca Fleming (Richardson) and Soritha MacDonna in respect to claims 21 A and 22A, 21 B and 22 B (excluding parcels 95 and 96 conceded by respondent no.1).

- (11) **Claim No. AXAHCV2010/0079: Robert Austin Richardson Administrator of the Estate of Eneria Richardson v Benjamin Wilson Richardson et al**

(a) On the basis of agreement between the parties, this court orders the transfer of parcel 12 measuring 1.33 acres to the estate of Eneria Richardson so that

the estate of Eneria Richardson becomes the registered proprietor of the said parcel12.

(b)This court declines to make an order for prescriptive title in favour of the estate of Eneria Richardson in respect to claims 12 A, 12 B and strip in Forest Bottom (excluding the house on parcel 18 which shall be transferred to the estate of Eneria Richardson,conceded by respondent no.1)

(12) **Claim No. AXAHCV201 0/0073: Leslie Richardson Administrator of the Estate of Alma Richardson v Benjamin Wilson Richardson et al**

This court declines to grant an order for prescriptive title in favour of the estate of Alma Richardson in respect to Lot 1A and the strip in the Forest Bottom.

2. Costs to respondents 1-5 and 7 to be agreed or otherwise assessed.

A handwritten signature in black ink, appearing to be 'Cynthia Combie Martyr', written in a cursive style.

Cynthia Combie Martyr
High Court Judge (Ag)