

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2009/0264

BETWEEN:

**ERNEST MATTIS substituted for
DARRELL WISEMAN of Vermont
Executor of the Will of Powell Mattis**

CLAIMANT

-AND-

**LETICIA NEVERSON of Pepper Village
Vermont**

DEFENDANT

**SWANSON MATTIS of Vermont but presently
Residing at 20 North Evergreen Edison New Jersey**

ADDED DEFENDANT

Appearances: Mr Emery Robertson Snr Counsel for the Claimant, Mr Jaundy Martin Counsel for the Defendant, Mr Joseph Delves and Ms Heidi Badenock for the Added Defendant.

2015: Feb. 24, 25 & 26
Apr. 15

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** This case involves a dispute between half-brothers and half-sisters, children of Powell Mattis deceased. The late Powell Mattis had several children including Ernest Mattis, with his first wife Ruth Mattis deceased. After her death, Powell Mattis married Verona Mattis and had several children with her

including Swanson Mattis. Powell Mattis made a will in which he appointed Darrell Wiseman as executor. He devised over 16 acres of land to his wife Verona and children. He left 3 acres to his daughters Eloise and Yvonne and 6 acres to be divided among his children Neville, Earnest, Rocina and Leonard. Darrell Wiseman brought this claim as executor against Leticia Neverson for possession of those 9 acres.ⁱ Ms Neverson asserts that she occupied the land as a lessee from Swanson Mattis who she claims leased to her the lands in his capacity as intended administrator of Verona Mattis' estate.ⁱⁱ Swanson Mattis maintains that his mother Verona Mattis owns the 9 acres.

[2] Swanson Mattis was joined as an added defendant and an amended claim form was filedⁱⁱⁱ and subsequently served on him. He has asserted that his mother bought 3 acres of the lands from Yvonne and Eloise Mattis, and that she owns the other 6 acres by virtue of Statutory Declaration No. 1340 of 1998 which she made declaring herself owner. He counterclaims for an order that her estate is owner of the lands. Following Darrell Wiseman's death,^{iv} Ernest Mattis was substituted as claimant in his stead.^v He contends that Verona Mattis occupied the disputed lands in furtherance of permission granted to her by Darrell Wiseman to do so. He seeks:

- i) a declaration that the Statutory Declaration is null and void;
- ii) a declaration that Swanson Mattis could not have legally leased the lands to Leticia Neverson;
- iii) sums totaling \$24,000.00 from Leticia Neverson and Swanson Mattis for wrongful deprivation of the lands;
- iv) an order cancelling the Statutory Declaration;
- v) an order for possession of the 9 acres;
- vi) an injunction restraining Swanson Mattis from leasing the lands; and

vii) general damages for deprivation of use of the lands.

- [3] It appears that Ernest Mattis has abandoned the claim in respect of the 3 acres of land allegedly sold to Verona Mattis by Elouise Francis and Yvonne Mattis. In this regard, the amended Fixed Date Claim Form^{vi} omits all reference to those lands and concentrates on the 6 acres which are the subject of the impugned Statutory Declaration. Notwithstanding, during the trial witnesses were cross-examined on both documents.

Preliminary Point – Admissibility of Darrell Wiseman's witness statement

- [4] Darrell Wiseman made a witness statement in this matter.^{vii} In course of the trial, Ernest Mattis made an application for the witness statement to be admitted into evidence. No formal application was made but counsel for Ernest Mattis made an oral application for its admission,^{viii} which was denied. Once again in his closing arguments,^{ix} learned counsel Mr Robertson submitted that Darrell Wiseman's testimony should be taken into consideration as it is relevant to the issue of alleged permission granted to Verona Mattis by the executor to occupy the lands and this negatives adverse possession by her.
- [5] The court has wide discretion to control the evidence to be given at a trial.^x A witness statement does not become evidence unless the court orders otherwise, until the witness who gave it verifies the contents on oath.^{xi} The case management directions^{xii} in this case, included an order that all witnesses attend for cross-examination unless their attendance is dispensed with by the other side in writing. No such notice in writing was filed in respect of any of the witnesses. Ernest Mattis did not file a notice that he intended to rely on Darrell Wiseman's witness statement^{xiii} and no order was made to admit it.^{xiv}
- [6] In considering the renewed application by Ernest Mattis to admit Darrell Wiseman's witness statement I have once again considered that the application was made without the required notice to the other parties. Ernest Mattis would

have known since 2012 that Mr Wiseman would not be available for trial and 10 weeks before the trial date he became aware that the trial was being scheduled for February 2015.^{xv} Admission of the witness statement on this belated application would potentially prejudice the other parties who came to the trial conceivably not expecting that such an application would be made, and accordingly not addressing their minds or alerting their witnesses as to the assertions made in that statement. Further, none of the other parties have considered this statement in their final submissions which in all likelihood they would have done if they anticipated that the contents would be considered in arriving at a decision. Admittedly, it would be prejudicial to Ernest Mattis' case to omit the statement.

[7] Mindful of the overriding objective to dispose of matters in a fair and equitable manner and weighing the prejudice that would be occasioned to the respective parties depending on what order is made, I refuse to admit Darrell Wiseman's witness statement into evidence or factor any part of it in assessing the respective claims. The justice of the case is best served in all of the circumstances by omitting it.

[8] Yvonne Hazell gave a witness statement also but her evidence was not taken as she failed to present herself at the pre-arranged, confirmed times for her attendance by video link, on no less than 3 separate occasions.^{xvi} Yvonne Hazell's witness statement is therefore not evidence in the case due to her inexplicable absence^{xvii} and because there is no order admitting it into evidence.^{xviii}

ISSUES

[9] The court must decide whether:

- i) Verona Mattis acquired title to the disputed:

- a) 3 acres of land by purchase from Yvonne Hazell and Eloise Francis; and if not, whether the Deed of Conveyance should be cancelled;
 - b) 6 acres of land by adverse possession as recited in the Statutory Declaration;
- ii) If not, whether:
 - a) The Statutory Declaration should be declared null and void and cancelled;
 - b) Swanson Mattis and/or Leticia Neverson should be ordered to pay damages to Ernest Mattis and/or Yvonne Hazell and Eloise Francis for deprivation of use of the lands; or
 - c) Whether Ernest Mattis should be granted an injunction restraining Swanson Mattis from leasing the subject lands.
- iii) Executor Darrell Wiseman's claim to the 9 acres on behalf of Powell Mattis' estate is statute-barred?

ANALYSIS

Issue 1 – Did Verona Mattis acquire title to the 3 acres of land through purchase from Eloise Francis and Yvonne Hazell?

- [10] The original claim form contains a description of 9 acres of land which forms the subject matter of this case.^{xix} The Amended Fixed Date Claim Form omits this description and instead refers throughout to 6 acres described in the Statutory Declaration and 5 acres leased to Leticia Neverson. It is common ground among the parties that the lands leased to Leticia Neverson are comprised of lands in the Statutory Declaration^{xx} and the Deed of Conveyance.^{xxi}
- [11] Eloise Francis gave a witness statement and was cross-examined via Skype from her residence in Sunrise, Florida. During part of her testimony, her son remained

in the room with her to assist with the technological part of the transmission. After he was observed seeking to assist the witness with her answers, he was ordered to leave the room. It was apparent that he sought to remain in the room off camera and the order had to be repeated. While the court is authorized to permit evidence to be received via video link, justice requires that the same rigid rules regarding provision of unassisted testimony be scrupulously observed throughout. Litigants and witnesses who seek to circumvent those parameters would invariably suffer the consequences.

- [12] In any event, Mrs Francis denied selling any lands to Verona Mattis. She said she first saw the Deed conveying the lands to Verona in the 80's. She denied that the signature attributed to Eloise Francis was hers although she admitted that the handwriting looked something like hers. She stated that she could not remember if she signed the Deed. She averred:^{xxii}

"I have been shown a Deed registered as No. 143 of 1969. The said deed bears a date 5th November 1967 and was purportedly signed in a handwriting which looks similar to mine but I cannot remember ever acknowledging my signature on the deed, nor did I ever witness the sum of \$1440.00 being paid by Verona Mattis to the alleged Vendors for the said land.

That I have never sold any of that property to anyone. If a statement has been made or any documentation produced to that effect by anyone such statements and documentation are fraudulent and unlawful."

Mrs Francis exhibited to her witness statement a letter^{xxiii} in which similar statements are made. She indicated that she has seen Yvonne's handwriting but she does not know what her handwriting looks like.

- [13] For his part, Ernest Mattis asserted that he was aware that Yvonne Hazell wrote a letter to Verona Mattis giving her permission to cultivate the land. None of the

witnesses produced such a letter. Mr Mattis added that while he was shown a Deed of Conveyance purportedly signed by Darrell Wiseman, Eloise Francis and Yvonne Mattis conveying 3 acres of land to Verona Mattis, he doubts its *bona fides*. He stated that he does not know if the signature attributed to Eloise Francis is in her handwriting but that the one attributed to Yvonne Mattis is definitely not Yvonne Mattis' signature as it does not look like hers. He was adamant that the signature ascribed to Darrell Wiseman does not look like his signature. He testified that he did not recognize any of the signatures on the Deed and admitted that he did not see Darrell Wiseman's signature in the 60's. This admission renders his evidence regarding whether the signature looks like Darrell Wiseman's suspect and I do not accept it as being genuinely and honestly expressed.

[14] Swanson Mattis relies on the existence of the Deed of Conveyance^{xxiv} as proof of ownership of the 3 acres by his mother Verona Mattis. He attested that his mother bought the lands from Yvonne and Eloise and paid for it with monies she obtained from selling a Volkswagen car. I note that Swanson Mattis by his own admission would have been no more than 4 years old at the time of that alleged sale and would be unlikely to have personal knowledge of those details. I accordingly disregard his testimony on this issue in the absence of documentary or other corroborative evidence regarding use of the proceeds of sale from a Volkswagen to fund the purchase of the lands. Leticia Neverson insists that the subject lands are owned by Swanson Mattis and that her occupation of them is lawful as he represents the estate of the true owner, Verona Mattis and she occupies and farms the land pursuant to leases between them. She exhibited the Deed and the leases to her Defence.^{xxv}

[15] The Deed of Conveyance is expressed to be made among "Darill Wiseman" as executor, Eloise Francis and Yvonne Mattis as Vendors and Verona Mattis as Purchaser in respect of one acre and two acres of land at Taco devised respectively to Eloise Francis and Yvonne Mattis by Powell Mattis' will. The

purchase price is stated to be \$1440.00. The signatures of “Darrell Wiseman”, “Elouise Francis” and “Yvonne Mattis” are inscribed on the Deed, *ex facie* in the presence of Renrick Keil, Solicitor’s clerk, whose declaration to this effect^{xxvi} is attached to the Deed. A Darrell Wiseman also acknowledged his signature before the Registrar^{xxvii} as evidenced by the official Deed records at the High Court Registry Office. The court takes judicial notice of the original registered Deed. A deed so registered operates to convey to the purchaser, the right, title and interest of the property described in it which vests in the person transferring it.^{xxviii}

[16] I do not for one moment believe that Darrell Wiseman’s, Yvonne Mattis’ and Elouise Francis’ signatures were forged on that Deed. To arrive at such a conclusion, I would have to find that Renrick Keil, the Acting Deputy Registrar, the Registrar^{xxix} and Othneil Sylvester (the attorney who prepared the Deed) conspired with Verona Mattis to forge the document thereby depriving Mrs Francis and Ms Yvonne Mattis of their devises under their father’s will. Mrs Francis did not impress the court as a witness of truth. For this reason, whenever her testimony conflicts with that of other witnesses, their testimony will be accepted. Furthermore, Ernest Mattis and Elouise Francis have produced no evidence in support of their contention that the Deed is fraudulent, except Mrs Francis’ say so. They accuse Verona Mattis of fraud obliquely, by which they supposedly mean forgery, but have failed to provide satisfactory proof such as expert handwriting evidence.

[17] Ernest Mattis has failed to discharge the onus to prove on a balance of probabilities that Mrs Francis and Mrs Hazell did not sell the 3 acres of land to Verona Mattis. The Deed of Conveyance has been registered at the Registrar’s Office and thereby effectively records and provides evidence that Verona Mattis formerly, and now her estate, owns the legal and equitable interest in the subject land. The Deed of Conveyance having been registered is proof to all the world that Verona Mattis bought the said lands from Darrell Wiseman, Elouise

Francis and Yvonne Mattis and became owner of the fee simple of it and I so find. I find also that Verona Mattis' estate is entitled to the legal and equitable interest in the said lands. Elouise Francis and Yvonne Hazell are not entitled to any damages for trespass to the said land. Ernest Mattis' prayer to cancel the Deed is refused.

- [18] It must not go unremarked that Darrell Wiseman's and Eloise Francis' witness statements contain the same averments regarding the sale of the land.^{xxx} It is more than passing strange that the three intended witnesses used the exact same words to describe a transaction which on the face of it effected the transfer of 3 acres of land from Yvonne Hazell and Eloise Francis to Verona Mattis. It smacks of collusion in preparation of their respective witness statements which hints at a measure of deception. In face of the documentary evidence, even if the witness statements of Darrell Wiseman and Yvonne Hazell were admitted, that would not have advanced their case on this issue in any way.

Issue 2 – Did Verona Mattis acquire title to the disputed 6 acres of land by adverse possession as recited in the Statutory Declaration?

- [19] By Deeds of Conveyance 466 of 1958 and 467 of 1958 Powell Mattis purchased one acre and 4 rood respectively from Jack Vincent Punnett which from the description appear to be congruent with the disputed lots. At his death, Powell Mattis was registered as the paper owner of those parcels. Ernest Mattis gave evidence on this point. His witnesses Elouise Francis and Roslyn Mattis corroborated much of his testimony. He testified that he is one of six beneficiaries who under his father's will are entitled to 9 acres of land at Taco – the subject matter of the original claim. He identified the other beneficiaries as his siblings Neville, Leonard, Rocina, Elouise and Yvonne.

- [20] He averred that Darrell Wiseman extracted Probate^{xxx} but failed to administer the estate and execute Deeds in their favour. He explained that Mr Wiseman permitted Verona to work the subject lands, until it would be surveyed, divided and distributed according to the provisions of the will. He maintains that neither Verona Mattis nor Swanson Mattis is owner of the lands and that Swanson Mattis has never been in actual or physical possession of the lands as he lives overseas. He asserts that the Statutory Declaration is false and should be invalidated. Further, he insists that Leticia Neverson is a trespasser who for her part maintained that she is Swanson Mattis' tenant and refused to give up possession as directed in the Notice to Quit sent to her by Darrell Wiseman.^{xxxii} He indicated that he had never spoken to Leticia Neverson but instructed his lawyer to write to her on his behalf.
- [21] Ernest Mattis maintained throughout that Darrell Wiseman and not Verona Mattis was in control of the land after Powell Mattis died. He insisted that Verona occupied the lands based on Darrell Wiseman's consent to her. He submits that the 9 acres have never been physically divided and they remain in the possession of the 6 named beneficiaries in the will. He indicates that he now wishes to receive the inheritance left to him by his father, of which he has been deprived through Verona Mattis' and Swanson Mattis' claims to ownership. Under cross-examination he admitted that he did not know who put Leticia Neverson and Big Man to work on the property and he does not know how much of the land Big Man is working although he knows that Leticia is currently there working.
- [22] Under cross-examination Ernest Mattis said that he does not know if the Statutory Declaration relates to any of the disputed 9 acres. This is incredible having regard to the claim which is before the court. Either Mr Ernest Mattis is not familiar with the claim or he is not being forthright. He denied that Verona Mattis paid the taxes for the 6 acres described in the Statutory Declaration. He

insists that his sister Edna Phillips paid the taxes from the time his father died until he started paying them himself in 2009.

- [23] Elouise Francis testified that her sister and not Swanson Mattis has been paying the taxes for those lands. She was unable to say if it amounted to 6 or 9 acres. Roslyn Mattis testified that Powell Mattis was her father but she is neither Verona nor Ruth Mattis' daughter. She indicated that she paid the taxes represented by receipts exhibited as "R.M. 1 a – n" in respect of 9 acres of land. She said that she was unaware that Swanson Mattis paid taxes in respect of those lands also but if there are receipts in Verona's name they might refer to lands in "Cornal" which Verona owns. She recalled that Darrell Wiseman told her that he gave Verona permission to work the land in the mountain in Taco and she was to work it "for life" as she had the children.
- [24] Roslyn Mattis told the court that she heard Darrell Wiseman give Verona Mattis permission to occupy the 9 acres of land. She admitted that she did not see a paper from Darrell Wiseman to Verona about this permission. She explained that Verona hired workers to work the lands after her father died. She stated that Leticia works part of the land and Big Man works in that area but she is not sure if he is on the same piece of land. I accept this testimony as being credible. While Roslyn Mattis appeared reticent at points in her testimony she impressed me as a witness of truth. I did not get the impression that she was biased towards Ruth Mattis' or Verona Mattis' children.
- [25] Swanson Mattis testified that he is the Administrator of his mother Verona Mattis' estate. He indicated that he knows the land well, that it consists of two parcels bounded to each other but separated by a gutter, one piece being about 3 acres as reflected in the Deed of Conveyance and the second piece being 6 acres as described in the Statutory Declaration. He stated that his mother occupied the land without permission from anyone, was in sole possession, custody and control of it from after his father's death until he left Saint Vincent in 1993. He

indicated that his mother gave the government permission to straighten the main road through her land in the late 1980's. He maintained that his mother paid taxes for the land since he was a teenager and that he continued to pay them after her death. His sister Daffodil Mattis' testimony was similar to his and corroborated him on the relevant matters.

[26] Leticia Neverson testified that in all her "growing up days" she knew that Verona Mattis used to occupy the lands. She said that Swanson Mattis never told her that he was the owner of the land, but rather that it was his mother's place and he was the administrator. She also indicated that she was very familiar with the 9 acres in dispute, part of which she was granted a lease to cultivate and another part of which Mr Abraham aka Big Man is cultivating. Her husband Osbourne Samuel's evidence was similar to hers. He intimated that his wife was primarily responsible for dealing with arrangements for the lease as he is not academically gifted.

[27] The evidence provided by the several witnesses was emotional and highly charged as between the half-brothers and half-sisters. In deciding whether Verona Mattis' estate owns the 6 acres of land at Taco, the testimony of the witnesses and the content and effect of the Statutory Declaration are relevant. The late Verona Mattis made the Statutory Declaration on July 14, 1997 declaring herself to be the owner of the disputed 6 acres of land. She recited in it that her husband devised 9 acres of land at Vermont to 6 of his children and that she purchased 3 acres from 2 of the beneficiaries. She recorded also that since the death of her husband in 1966, she has enjoyed undisputed possession of the 6 remaining acres except for 2 years 1972 – 1974. Quite telling are paragraphs 8 and 9 which read:

"8. That my possessory title was never challenged or molested by anyone, until the 16th day of May 1997 when I received word on behalf of the Executor, to provide information and or documentation

as to the land purchased by me, and I have not been accounting to any other person or superior landlord.

9. *That by virtue of Section 17 of Cap. 90 of the Limitation Act 1988, Vol. 3 of the Laws of Saint Vincent and the Grenadines, I declare that the right of anyone to dispossess me of the said land is extinguished and the right of any person to bring any action to recover this parcel of land must first accrue to that person or his predecessor in title within 12 years. I therefore claim a possessory title of this parcel of land since I have always been in undisputed and uninterrupted possession of the parcel of land for over 25 years...*"

[28] It is obvious that Mrs Mattis sought and obtained legal advice which she endeavoured to apply in a self-serving manner to register what she considered to be her interest in lands which she knew and acknowledged had been devised to her step-children. The Statutory Declaration is expressed to have been made pursuant to the Declarations in Lieu of Oaths Act,^{xxxiii} which permits attesting witnesses to documents and other persons to make declarations instead of oaths to validate the execution of a deed.^{xxxiv}

[29] Apart from Verona Mattis' statements in the Statutory Declaration and those of Swanson Mattis in his evidence in this matter, there is no credible documentary or other evidence that Verona Mattis succeeded Powell Mattis as the owner of the said land by registration of the impugned Statutory Declaration. On the contrary, Roslyn Mattis is quite clear that Darrell Wiseman gave Verona Mattis permission to occupy the disputed lands for her lifetime. Although this is contrary to the terms of the will, Mr Wiseman as executor was legally in control of the property.^{xxxv} This permission amounts to a licence in Verona Mattis' favour which ended when she passed away in 2012. I accept Roslyn Mattis testimony and find that Verona had merely a licence to occupy the property.

[30] Even if no such licence existed and while Verona Mattis' intention to record her interest in the lands is eloquently reflected in the Statutory Declaration, it does not without more confer to her any interest in the land. In order for a transfer or assignment of interest in real property to be effective or create a cause of action in favour of the transferee, it must be evidenced by a memorandum in writing made by the person against whom it is to be enforced.^{xxxvi} Swanson Mattis has produced no writing to this effect from the executor representing Powell Mattis' estate, the executor's servant or agent or any of the beneficiaries who own a beneficial interest in the subject property. In those circumstances, Verona Mattis' self-proclaimed ownership of the disputed land in the absence of such other documentary proof is not efficacious to vest in her a legal or beneficial interest in the disputed land. Verona Mattis did not acquire title, right or interest in the land by adverse possession nor is she the owner of the said lands and I so find. Accordingly, Swanson Mattis had no interest in the lands which he could lease to Leticia Neverson or anyone. I therefore order that Statutory Declaration No. 1340 of 1998 be cancelled.

Damages

[31] It is trite law that a trespass to land occurs through any direct and immediate act of interference with an owner's enjoyment or possession of land and is actionable *per se* without proof of damage. A continuous trespass creates a fresh action for each day that it lasts.^{xxxvii} In the circumstances, Swanson Mattis is a trespasser on the subject land as he had no authority to occupy the property after Verona Mattis died. Similarly, Leticia Neverson who claims to occupy the property based on Swanson Mattis' declarations of ownership is also a trespasser as he could not convey to her an interest that he did not possess. Ernest Mattis is entitled to recover damages for trespass from them both.

[32] Having regard to the rent paid by Leticia Neverson to Swanson Mattis under the leases - \$1500.00, \$2000.00 and \$2400.00 respectively for the first 2 years, the ensuing 3 years and the last five years.^{xxxviii} I order Swanson Mattis and Leticia

Neverson to pay to Ernest Mattis in his capacity as Darrell' Wiseman's representative of estate damages of \$18,000.00 for the period February 2, 2004 to February 2nd 2014 and damages of \$3400.00 for the period February 2, 2014 to April 2nd 2015 a total of \$21,400.00. I have used the rental rates for the periods covered by the leases and allowed a moderate increase for the period which followed.

Injunction

- [33] Ernest Mattis' prayer for an injunction was qualified by the words, "until the trial of this matter or until further order". There is no need to consider that part which relates to an interim injunction pending trial of the claim, for obvious reasons. In exercising its discretion to grant a permanent injunction, the court is empowered to grant such relief if it is satisfied that in all the circumstances of the case that it is just and equitable to do so.^{xxxix} The court must be mindful that it may only grant the injunction if Ernest Mattis as Darrell Wiseman's representative proves to the court's satisfaction that he is entitled to the ownership of the disputed land which he has done. He must also demonstrate that he has acted promptly in seeking relief and has not delayed. This claim was brought 7 years after it accrued. In my view, the executor did not take prompt action to secure relief.
- [34] Finally, an injunction will be granted where there is evidence before the court that there is a strong probability that the applicant will suffer grave damage in the future and that damages are an inadequate remedy. No evidence has been presented regarding any apprehensions which Ernest Mattis entertains regarding grave damage which might be caused to Powell Mattis' estate by Leticia Neverson's and Swanson Mattis' interference with the land in the future. Ernest Mattis has not discharged the onus of satisfying the court that it is just and equitable to grant injunctive relief. It is therefore denied.

Issue 3 – Is executor Darrell Wiseman’s claim to the 9 acres on behalf of Powell Mattis’ estate statute-barred?

[35] The evidence is that Verona Mattis died in September 2002. Darrell Wiseman had 12 years (ending in 2014) after her death in which to bring a claim for possession.^{xi} He commenced action against Leticia Neverson in 2009 and against Swanson Mattis in August 2013, both well within the limitation period. Neither claim is barred.

ORDERS

[36] It is accordingly ordered:

1. Statutory Declaration No. 1340 of 1998 conveyed to Verona Mattis and her estate no interest, right or property by adverse possession or otherwise, in the six acres of land described therein, situate at Vermont all that lot, piece or parcel of land abutted and bounded on one side by the Buccament River, on the other side by lands in the possession of one Miller, on another by lands in the possession of Verona Mattis and on the other side by Crown Lands or howsoever the same may be butted bounded known distinguished or described TOGETHER with all ways waters water-courses rights lights liberties privileges and easements thereto belonging or usually held used or occupied or enjoyed therewith or reputed to belong or be appurtenant thereto..
2. Statutory Declaration No. 1340 of 1998 is declared null and void and the Registrar is directed to cancel it.
3. Leticia Neverson and Swanson Mattis are to pay Ernest Mattis in his capacity as Darrell Wiseman’s representative, damages in the sum of \$21,400.00, for trespass to the said property and wrongful

deprivation of the property during the period February 1, 2004 to April 15, 2015.

4. Ernest Mattis' claim for a permanent injunction (as Darrell Wiseman's representative), restraining Swanson Mattis from further leasing and/or agreeing to lease the said lands and/or selling and/or offering the lands for sale to Leticia Neverson and/or Osborne Samuel or any other person is dismissed.
5. It is declared that Deed of Conveyance No. 143 of 1969 conveyed to Verona Mattis and her estate all rights to, interest and property in the 3 acres of land described in it, situate at Taco in the Parish of Saint Andrew in the island of Saint Vincent being butted and bounded on the North by the Queen's River reserve on the East by Crown Lands and lands of the heirs of J. Hickson on the South by lands of the heirs of J. Willar and on the West by the remaining land of the heirs of Powell Mattis or howsoever otherwise the same may be abutted bounded known or described TOGETHER with all ways waters water-courses rights lights liberties privileges and easements thereto belonging or usually held used or occupied therewith or reputed to belong or be appurtenant thereto.
6. Leticia Neverson and Swanson Mattis are to quit and deliver up vacant possession of the six acres of land situate at Taco and described in Statutory Declaration No. 1340 of 1998, to Ernest Mattis as representative of Darrell Wiseman's estate.
7. Ernest Mattis is to pay Swanson Mattis agreed costs of \$24,000.00 in respect of his claim for a declaration that Verona Mattis' estate is the owner of the 3 acres of land at Taco described in Deed of Conveyance No. 143 of 1969.

8. Swanson Mattis and Leticia Neverson are to pay Ernest Mattis costs of \$12,000.00 each in respect of his claim for damages and a declaration that Powell Mattis' estate is the owner of the 6 acres of land at Vermont described in Statutory Declaration No. 1340 of 1998.

[37] I wish to thank all counsel for their submissions.

.....
Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ By Fixed Date Claim Form filed on August 14, 2009.

ⁱⁱ See her Defence filed on November 24, 2009. A second Defence was filed on behalf of Leticia Neverson on December 3, 2009. However, she filed a Notice of Application on February 19, 2010 to withdraw the later Defence but it was not heard by the court. She deposed in her affidavit filed in support that she had not authorized the filing of that later Defence. She did not rely on it in the trial. In any event, the Certificate of Truth affixed to that Defence by her former Attorney is non-compliant with CPR 3.12. Accordingly, it is invalidated by this default.

ⁱⁱⁱ Filed on August 19, 2013. It does not appear that this Amended Fixed Date Claim Form was served on the Defendant

^{iv} On December 27, 2012.

^v Pursuant to Civil Procedure Rules 2000 ("CPR") Part 19.2, presumably sub-paragraph (5) (a). See the Notice of Application which states that the application is being made pursuant to CPR 19.2. See Order of the Court dated February 20, 2013 which states:

"It is ordered that Ernest Mattis the son of Powell Mattis in place of Darrell Wiseman the sole executor of the Will of the said Powell Mattis dated the 30th day of August, 1965 who died on the 27th day of December, 2012 to carry on the above named suit."

^{vi} Filed on August 14, 2009.

^{vii} Filed on December 5, 2012.

^{viii} At the trial, with no prior notice to the Defendant and Added Defendant.

^{ix} Filed on March 20, 2015.

^x See CPR 26.1 (2) (f) & (p), 29.1, 29.2, 29.4, 29.8, 29.10 and 38.6 (2) (g) which provide:

"26.1 (2) Except where these rules provide otherwise, the court may-

(f) direct that any evidence be given in written form;

(p) require the maker of an affidavit or witness statement to attend for cross-examination;"

"29.1 The court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the-

(a) issues on which it requires evidence; and

(b) way in which any matter is to be proved.

29.2 (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved at –

(a) trial – by their oral evidence given in public; and

(b) any other hearing – by affidavit.

-
- (2) The general rule is subject to any –
- (a) **order of the court; and**
 - (b) **provision to the contrary contained in these rules or elsewhere.”**

“29.4 (1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial.

(2) A statement of the evidence referred to in paragraph (1) is known as a “**witness statement**”.

(3) A party’s obligation to serve a witness statement is independent of any other party’s obligation to serve such a statement.

(4) The court may give directions as to-

- (a) the order in which witness statements are to be served; and
- (b) when they are to be filed.”

“29.8 (1) If a party –

- (a) has served a witness statement or summary; and
 - (b) wishes to rely on the evidence of that witness;
- that party must call the witness to give evidence **unless the court orders otherwise.**

(2) If a party-

- (a) has served a witness statement or summary; and
 - (b) does not intend to call that witness at the trial;
- that party must give notice to that effect to the other party not less than 28 days before the trial.” (bold mine)

“29.10 If a witness is called to give evidence at trial, that witness may be cross examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness’ evidence in chief.”

“38.6 (1) At the pre-trial review the judge must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.

(2) In particular, the court may-

- (g) give directions as to the extent to which evidence may be given in written form.”

See also **Rowan Bailey v Ferdinand Carty et al ANUHCVP2006/014 per Edwards J.A. [Ag.] at para [10]** where she said:

“Pursuant to CPR 29.1, 29.4, 29.10 and 38.6 (2) (g) served witness statements may stand as evidence in chief; and a witness statement becomes evidence when verified on oath by the witness at trial.”

^{xi} Ibid. at CPR 29.2(1)(a) & (2), 29. 8(1) and **Rowan Bailey v Ferdinand Carty et al.**

^{xii} By order dated March 12, 2014.

^{xiii} Pursuant to CPR 29.8 (2) which requires 28 day’s notice.

^{xiv} Pursuant to CPR 26.1 (2) (f), 29.2 (a) or 38.6 (2) (g).

^{xv} By virtue of Order dated December 8, 2014.

^{xvi} At approximately 12.15pm, 1.40pm and 3.00pm on February 24, 2015. The witness was contacted by court staff on February 23, 2015 and advised to be available at 9.00am on February 24, 2015. She was not available at that time or at the later times although Ernest Mattis and his counsel were informed before the luncheon adjournment to contact her and arrange to have her present at 1.30pm and again before court ended its sitting on that date. Although the Skype address was accessible throughout, no one responded to the calls and the court was provided with no explanation for her absence. The court determined that no further attempts would be made to contact Yvonne Hazell.

^{xvii} Which amounts to non-compliance with CPR 29.2 (1) (a), 29.8 (1) and order of the court dated March 12, 2014.

^{xviii} Pursuant to CPR 29.2 (2).

^{xix} It is described in paragraph 2 as:

“All that lot piece or parcel of land situate at Taco Mountain in the Vermont Valley being 9 acres more or less and is butted (sic) and bounded on the North by the Buccament River, on the South by lands of Nathaniel Miller and Browne and the East by lands of Baby Robinson and on the West by the Crown lands and howsoever otherwise the same be butted and bounded known distinguished or described Together with all ways water watercourses rights lights liberties privileges and easements and appurtenances thereto belonging or usually held used occupied and enjoyed therewith or reputed to belong or be appurtenant thereto.”

^{xx} No. 1340 of 1998.

^{xxi} Deed of Conveyance No.143 of 1969.

^{xxii} See paragraphs 4 and 6 of Elouise A. Francis’ witness statement.

^{xxiii} Dated July 11, 2001 addressed to “To Whom it May Concern”.

^{xxiv} Supra. Deed of Conveyance.

^{xxv} See Defence filed on November 24, 2009, Deed of Conveyance exhibited as “A” and leases exhibited as “C” and “D”.

^{xxvi} Attested in the presence of Inez Coombs, Acting Deputy Registrar.

^{xxvii} On November 5, 1968 before the Registrar, a person authorized to administer an oath pursuant to section 8 (1) (a) (i) and (ii) of the Registration of Documents Act Cap.132 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provides:

“8 (1) The execution of all deeds shall be proved-

(a) if executed in Saint Vincent and the Grenadines either-

- (i) by the persons executing the same acknowledging their signatures to the deed personally before a judge, a magistrate, the Registrar, deputy registrars, assistant secretaries and senior executive officers serving in the registry, any legal officer in the service of the Crown, or a notary public, or
- (ii) by the declaration in writing of, subscribed by an attesting witness thereto, proving the execution thereof, made before any of the persons holding offices set out in subparagraph (i);”

^{xxviii} In accordance with section 5 (1) of the Registration of Documents Act Cap 132 of the Revised Laws of Saint Vincent and the Grenadines 2009 which provides:

“5 (1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such other real estate.”

^{xxix} Mr Keil and Mr Wiseman respectively subscribed to a declaration in proof of execution of the deed and acknowledged execution of the deed before the Acting Deputy Registrar and the Registrar.

^{xxx} See paragraph 7 of Darrell Wiseman’s witness statement and paragraph 4 of Elouise Francis’ witness statement.

^{xxxi} On July 22, 1967.

^{xxxii} Dated April 26, 2006.

^{xxxiii} Chapter 157 of the Revised Edition of the Laws of the State of Saint Vincent and the Grenadines.

^{xxxiv} Cap. 219 of the Revised Laws of Saint Vincent and the Grenadines, 2009. Section 4 provides:

“4 Any attesting witness to the execution of any deed, will, codicil or instrument in writing, and any other competent person, may verify and prove the signing, sealing, publication or delivery of any such deed, will, codicil or instrument in writing by declaration in writing, and any person heretofore authorized to administer and receive any oath or affidavit for such proof as aforesaid, is hereby authorized to administer and receive such declaration in lieu thereof.”

^{xxxv} See also section 4 (1) which provides:

“4 (1) Real property to which a deceased person was entitled for an interest not ceasing on his death, and notwithstanding any testamentary disposition thereof, devolve from time to

time on the personal representative of the deceased in like manner as before the 1st January, 1926, chattels real devolved on the personal representative from time to time of a deceased person.”

Section 2 (1) defines personal representative as:

“personal representative’ means the executor, original or by representation, or administrator for the time being of a deceased person,...”.

See also **Tristram and Cootes Probate Practice, Thirtieth Edition, para. 4.01** which states:

“An executor derives his title and authority from the will of his testator and not from any grant of probate. The property of the deceased, including any right of action, vests in him on his testator’s death, and he can institute an action, as executor, before he proves the will.”

^{xxxvi} Section 3 of the UK 1677 Statute of Frauds which applies in Saint Vincent and the Grenadines by virtue of section 5 (1) (a) and the Schedule of the Application of English Law Act Cap. 12 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Section 3 of the Statute of Frauds and section 5 of the Application of English Law Act and the relevant paragraph of the Schedule provide respectively:

“3...No leases, estates or interest either of freehold or terms of years or any uncertain interest not being copyhold or customary interest of in to or out of any messuages manours lands tenements or hereditaments shall at any time ... be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorized by writing or by act and operation of law.

5. (1) Subject to the provisions of this section, only the following Acts of Parliament of the United Kingdom shall apply in Saint Vincent and the Grenadines, that is to say-

(a) all such Acts as are specified in the Schedule, to the extent specified therein; and...

Schedule

PART I

29 Chas.2 c.3 Statute of Frauds s.1-3, 4 (as it applied before the repeal of certain words by the Law of Property Act, 1925), 7-9, 13, 14 and 24.”

^{xxxvii} **Holmes v Wilson (1839) 10 Ad. & E. 503** and **Wheeler v. Keeble (1914) Ltd. [1920] 1 Ch. 57.**

^{xxxviii} See lease agreement for the period 1 February 2004 to February 2009, and lease registered as Deed No. 4186 of 2009 for the period 1st February 2009 to February 2, 2014.

^{xxxix} **Aslatt v. Corporation of Southampton (1881) 16 Ch.D. 143.**

^{xl} Section 17 (1) of the Limitation Act, Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which states:

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”