

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO: GDAHCV2008/0116

BETWEEN:

ELIZABETH MAUREEN FERGUSON

(Also known as Evadney)

Claimant

and

CLAUDINE LYDIA LA MOTHE

(Also known as Claudine Lydia Alexander)

Defendant

AND CLAIM NO: GDAHCV2008/0179

BETWEEN:

ELIZABETH MAUREEN FERGUSON

(Also known as Evadney)

Claimant

and

(1) YVETTE MITCHELL

(2) SHADDIN MITCHELL

(3) SHERRY-ANN MITCHELL

(4) GLAYSON MITCHELL

(5) ALBAN MITCHELL

(6) RACQUEL MITCHELL

Defendants

Appearances:

Mr. Francis Williams for the Claimant

Ms. Kim George for the Defendants

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2009: May 20

June 10

July 23

2010: March 24
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JUDGMENT

- [1] **MICHEL, J:** By fixed date claim filed on 27th February 2008, accompanied by an affidavit in support, the Claimant - Elizabeth Maureen Ferguson (also known as Evadney) - claimed against the Defendant - Claudine Lydia La Mothe (also known as Claudine Lydia Alexander) - that she (the Claimant) is entitled to possession of a bedroom occupied by the Defendant upstairs of the Claimant's house situate at Bonaire in the Parish of Saint Mark in the State of Grenada.
- [2] The Defendant responded by an affidavit filed by her on 7th April 2009 in which she denied that the Claimant is entitled to possession of the bedroom occupied by her (the Defendant) upstairs of the house at Bonaire and claimed that the aforesaid house "is and always was a family house." An affidavit sworn to by Shelley Mitchell was also filed on 7th April in support of the Defendant's case.

- [3] By affidavits sworn to by her and by Ashley Nedd and filed on 18th April 2008, the Claimant replied to the affidavits in response sworn to by the Defendant and by Shelley Mitchell, joining issue with them on the contents of their affidavits.
- [4] By fixed date claim filed on 20th March 2008, accompanied by an affidavit in support, the aforesaid Claimant claimed against the Defendants - Yvette Mitchell, Shaddin Mitchell, Sherry-Ann Mitchell, Glayson Mitchell, Alban Mitchell and Racquel Mitchell - a declaration that she (the Claimant) is entitled to have possession of her house which is situated at Bonaire in the Parish of St. Mark and the house plot on which the said house is built.
- [5] Affidavits in response signed by all six of the Defendants and an affidavit in support signed by Myanna Charles were filed on behalf of the Defendants on 15th May 2008.
- [6] On 26th June 2008 the Claimant filed affidavits sworn to by her and by Richlyn Phillip in reply to the affidavits in response sworn to by and on behalf of the Defendants.
- [7] In the meantime, by Order dated 16th May 2008, the two actions filed by the Claimant on 27th February 2008 and on 20th March 2008 were consolidated.
- [8] Standard disclosure in the now-consolidated actions was made by the parties by 31st October 2008 and witness statements were filed by the parties by 21st November 2008, as per a Case Management Order of 3rd October 2008. However, the statement of issues to be filed by the parties by 21st November (as per the Case Management Order) was filed on that date by the Claimant only, with the statement of issues on behalf of the Defendants being filed on 16th December 2008, with the leave of the Court.

- [9] Pre Trial Review of the matter fixed for 5th December 2008, was adjourned to 12th December, at which date the filing of the trial bundle and skeleton arguments on behalf of the parties was set for 30th January 2009 and a trial window was set for April 2009.
- [10] On 30th January 2009 the Claimant filed the trial bundle, together with the Claimant's skeleton arguments, and also filed the Claimant's list of authorities. On the said 30th January the Defendants filed their skeleton arguments and also filed their list of authorities.
- [11] The Court Office fixed the trial of the consolidated actions for 14th and 15th May 2009. On 13th May, however, the matter was called to receive an application on behalf of Counsel for the Defendants for the matter to be adjourned to a date after 18th May on account of the fact that Counsel for the Defendants was unwell. The Court adjourned the matter to 20th May 2009, at which date the trial did commence.
- [12] At the trial, the Claimant gave evidence on her own behalf and called two witnesses – Richlyn Phillips and Ashley Nedd - while each of the seven Defendants gave evidence and two other family members, Myanna Charles and Shelley Mitchell, gave evidence on behalf of the defence.
- [13] The evidence of the Claimant (as per her witness statement) was that she is the owner of the concrete two-storey house situate at Bonaire in the Parish of St. Mark, which is the subject matter of this case. She stated that the house was built on land purchased by her mother, Eurita Mitchell, and paid for with her (the Claimant's) assistance. She stated that, on visiting Grenada in or about 1970, she saw the state of disrepair of her mother's chattel house and the unbearable condition her mother was living in and she decided to construct a concrete house of her own and allow her mother and her mother's other children to live in the house until she (the Claimant) was ready to occupy it. She stated that first she

constructed the upper storey, for which purpose she obtained building materials on credit from the firm of L. A. Purcell in St. George's. She stated that on a regular basis she sent monies from the United Kingdom to service the debt at L.A. Purcell. She stated that her mother died in January 2005 leaving a Will in which she made the following devise: "I give devise and bequeath to my daughter Evadney also known as Maureen Ferguson who resides in England, the house spot on which she has her house." She stated also that in December 2006 the executrix of her mother's Will executed a deed in her favour in compliance with the Will. She stated that the Defendants - who are her sister, brother, nephew and nieces - have been living in her aforesaid house since 1991, with her and her mother's consent, but that she had given notice to each of them to quit and vacate the upstairs apartment of her house and the notice had expired but they have failed to vacate the upstairs apartment of her house.

- [14] In answer to a question by her lawyer, the Claimant said that she did not have any meeting with the Defendants in 1991 concerning the construction of the upstairs portion of her house.
- [15] The evidence of the Claimant under cross examination, though detailed, consisted mostly of denials of allegations put to her by Counsel for the Defendants based on the Defendants' case.
- [16] The next witness for the Claimant was Richlyn Phillips. The evidence of Ms. Phillips (as per her witness statement) was that she is the manager of the Accounts Department of the firm of L. A. Purcell and that she knew the Claimant since around 1991 when the Claimant approached the firm to obtain credit to build a house at Bonaire. She stated that since the Claimant provided her mother's title deed and plan of the property as security for the credit, and since her mother already had an account with the firm, the credit was done in the name of her mother, Eurita Mitchell. She stated that the Claimant was given a substantial line of credit for the construction of the house at Bonaire and she (the Claimant)

signed the agreement for the line of credit, as did the late Mr. Albert Forsyth as her guarantor. She also stated that the Claimant made a substantial down payment towards the cost of the building materials for the house and agreed to make monthly payments of \$400. She stated that she was familiar with Shelly Mitchell's dealings with the firm; that Shelly Mitchell had a separate account with the firm for furniture and household items which she purchased on credit from the firm and she also took cash loans from the firm; that Shelly Mitchell's salary was paid directly to the firm from which amounts were deducted for payment on her credit account and for repayment of her cash loans; that there were also payments made by Shelly Mitchell to the firm for the Claimant's account, not from her salary, but from money sent to Grenada by the Claimant. She stated that she or the firm of L. A. Purcell was never approached by Shelly Mitchell or Yvette Mitchell with a view to purchasing any building materials on credit around 1991.

[17] Under cross examination, Ms. Phillips indicated that apart from information obtained from the records of the firm concerning the credit on the building materials for the house at Bonaire, her evidence would be based on what she was told. She conceded that it was the Claimant who told her that she was the one sending money from England to pay to the firm on the credit account.

[18] The next witness for the Claimant was Ashley Nedd. The evidence of Mr. Nedd (as per his witness statement) was that he is a building contractor and was contracted by the Claimant in about 1990 or early 1991 to construct a house for her at Bonaire, with the Claimant's mother and her sister (Yvette) signing as witnesses to the contract. The contract was to build the upper floor of the house, supplying all labour, for about \$36,000, with the building materials to be supplied by the Claimant from L. A. Purcell. He stated that when he came to the building site he met two loads of sea gravel on the site but that apart from this - the source of which he was not sure about - all other building materials were purchased by the Claimant or by him with money supplied by the Claimant. He stated that he

knew that the Claimant set up a bank account from which her brother would withdraw funds with which to pay him (Mr. Nedd) for his labour. He stated that he also hired the Claimant's brother, Alban Mitchell, as a workman on the site and that he was paid for his labour just like any of the other workers. He denied that the upper floor of the house was constructed with family labour and asserted that he constructed the house himself with hired labour.

- [19] The first witness for the defence was Alban Mitchell, the Fifth Named Defendant in Claim No. 179 of 2008. The evidence of Mr. Mitchell (as per his witness statement) was that the disputed house in this case is a family house, with the upstairs portion always understood to belong to the Defendants, who all contributed to the construction of it. He stated that prior to the construction of the aforesaid house in or about 1990, he – along with his mother and other relatives – lived in a wooden two-bedroom house. He stated that they had decided to renovate the house and had already purchased 800 blocks and had sand and gravel on the ground in preparation for building. He stated that that same year the Claimant – who is the eldest of his mother's children and whom they all looked up to, paid respect to and had confidence in – came in from England and they told her that they were renovating the house and that Shelley was going to Purcell to make arrangements to get the materials to build the house on credit. He stated that there was a meeting with the Claimant, their mother, Shelley and "ourselves" and that the Claimant said that instead of proceeding how we had intended we should "do a family house," that she would stand the cost of labour and the others would stand the cost of the materials and that everyone agreed to that. He stated that a few weeks after that, Yvette and Shelley went - together with the Claimant - to Purcell to make arrangements for the materials, as a result of which the materials were provided by Purcell on credit. He stated that the credit account was opened in the name of their mother, with her plan and deed deposited as security. He stated that the monthly payment on the account was \$400, which was paid by Shelley alone for a long time, until Perry got a job and then the two of them started paying \$200 each. He stated that they did so for a

long time and, after a while, Yvette started to pay out of a sou sou that she had joined. He stated that the Claimant occasionally paid small amounts after Shelley and Perry had paid alone for a long time. He stated that the Claimant sometimes sent \$250 per month and that they would put the rest. He stated that the Claimant said that she did not have more money because she was renovating her house in England. He stated that the first down payment of \$4,000 which was paid to Purcell was paid out of monies owned by "us" and by Mammy (his mother) and that the Claimant did not make any contribution whatsoever towards the deposit. He stated that in or about the year 2000, the Claimant came to Grenada on vacation and called a family meeting where she asked the family's permission to construct the downstairs portion of the house for use by herself and her family and she proceeded thereafter to build downstairs on her own.

[20] Mr. Mitchell further stated in his witness statement that their mother died on 7th January 2005; that very shortly after the funeral the Claimant began to speak of the house as hers; that she did not even give them a chance to properly mourn their mother; that she said that the house was hers and we had to leave it. He stated that the Claimant left and went back to England and came back in June 2005 and then kept on talking about the house as hers and "making confusion." He stated that in or about September 2005 the Claimant came to the house one morning with documents and said that her lawyer said that we have to sign that paper because in a week's time we have to move out of her house. He stated that he refused to sign the documents because he does not think that the Claimant has any authority to claim the house as she does, but he believed that the others signed the documents because they were afraid.

[21] Under cross examination, Mr. Mitchell said that his mother's Will, by which she identified the house as belonging to the Claimant and devised the house spot to the Claimant, is not a good Will. He said that his mother did not make a Will; that he never knew her leaving the house to go anywhere to make a Will and he never noticed anybody come in the house to make any Will. He said that in 1991 he left

his previous employment as a labourer picking up nutmeg to come and work on the house, but he denied that the contractor was paying him a salary. He said that Mr. Nedd used to give him a little change.

[22] In general, the evidence of Alban Mitchell under cross examination consisted mostly of denials of statements put to him by Counsel for the Claimant, but woven in between the denials were contradictions of his own testimony and different answers to the same questions put differently.

[23] The second witness for the defence was Racquel Mitchell, who stated in her witness statement that she is the Sixth Named Defendant, the daughter of the Third Named Defendant and the granddaughter of the First Named Defendant in Claim No. 179 of 2008. She stated that she has read the witness statements of Yvette Mitchell, Alban Mitchell, Shelley Mitchell and Claudine La Mothe and vouches for the truthfulness of their contents in so far as they are within her personal knowledge.

[24] Under cross examination Racquel said that she is 22 years old now and was 4 years old in 1991. She admitted that she would not have known what transpired in 1991 between the Claimant and her mother or between the Claimant and the other Defendants around 1991. She said that she, along with her mother, her grandmother and other family members were paying rent to the Claimant, which she ceased paying upon instructions.

[25] In response to a question by the Court, Racquel said that she paid rent to the Claimant because she was pressured by the Claimant that if she did not pay she would have to leave the house.

[26] The third witness for the defence was Myanna Charles. In her witness statement she stated that she was 17 years old, that she is the daughter of the Defendant in Claim No. 116 of 2008 and is related to the Defendants in Claim No. 179 of 2008.

She stated that she recalls that sometime in late 2005 the Claimant called her downstairs the house and told her that she (the Claimant) did not want her to think that she was wicked and then told her about the leases that she had made the other occupants of the house sign and that she had to do so. She stated too that the Claimant said that now that she had them where she wanted them they could not overcome her and that she had "ketch them." She also stated that the Claimant told her not to tell anyone about their conversation.

[27] Under cross examination she said that she would have been 1 year old in 1991 when the upper floor of the house was being constructed and that she knows nothing about the financing of the construction of it.

[28] The fourth witness for the defence was Yvette Mitchell, the First Named Defendant in Claim No. 179 of 2008. The content of her witness statement is identical to that of her brother, Alban Mitchell, except that she makes a few statements in her witness statement that he did not make in his. For instance, she stated that when the Claimant came to the house in September 2005 with the lease for signature by the occupants of the house, the Claimant said that her lawyer said that if they did not sign the papers they would have to leave in 14 days, that she had all her papers and they could not win her in Court. She also stated that she (the witness) was scared; that she was under pressure because she had nowhere to go; that the Claimant was standing over her head; that she started to cry; that she and all the other Defendants were in the living room; that the Claimant did not give them a chance to think; that it was the only home they knew and they had nowhere else to go; and that she signed first and the others followed.

[29] Under cross examination, Ms. Yvette Mitchell maintained that the house is a family house, though she said that she does not know whether the Claimant ever considered it a family house. She insisted that her mother did not make a Will, but stated that she never challenged the document admitted to probate as the Will of her mother.

[30] The fifth witness for the defence was Glayson Mitchell, the Fourth Named Defendant in Claim No. 179 of 2008. He stated in his witness statement that he read the witness statements of Yvette Mitchell, Alban Mitchell, Shelley Mitchell and Claudine La Mothe and vouches for the truthfulness of their contents in so far as they are within his personal knowledge. He said in evidence before the Court that he paid rent for his room upstairs the house and that he signed a lease presented to him by the Claimant, but he did not sign it voluntarily. He said that he is and had from the time of the signing of the lease been a bailiff of the Court and could have gotten free legal advice. He said that he had spoken to his aunt, Yvette Mitchell, about going to see a lawyer, but she never did.

[31] The sixth witness for the defence was Claudine La Mothe, the Defendant in Claim No. 116 of 2008. In her witness statement Ms. La Mothe stated that the disputed house is and always was a family house; that she always occupied it as a family house; that she never ceased her occupation of it, even when she went to England in or about 1998; and that, prior to December 2007, the Claimant never challenged her right to occupy it. Ms. La Mothe denied that the Claimant built the house or that she is the owner of it. She stated that from 1990 or 1991 her grandmother's wooden house was rebuilt in two phases, with the first phase being the construction of the upper floor in 1990 or 1991, with financing obtained from the firm of L. A. Purcell. She stated that the Claimant sent money from the UK to pay towards the cost of materials for the house, but stated that she was aware that payments were also made towards that account by her cousins, Perry and Shelley, out of their earnings. She stated that the construction of this first phase was always treated as a family project and that it was always the intention of all of them, including her grandmother, Eurita Mitchell, that it was a family house and would be occupied as such for as long as they liked and there was never any mention of ownership by the Claimant. She stated that, based on that intention, they all contributed towards the labour for the house, which was primarily provided by members of the family. She stated that the second phase of the house was

built by the Claimant in or about the year 2000 after consultation with the family. She stated that she believes that the house remains a family house despite the alleged contents of her grandmother's Will.

[32] Ms. La Mothe also stated in her witness statement that an altercation took place between herself and the Claimant on 30th October 2007 and apparently another in January 2008 when she states that the Claimant told her that it was her (the Claimant's) house and that she (Ms. La Mothe) could not remain in the house. She said that obscenities were exchanged between them; that she never threatened the Claimant; and that the Claimant told her that she has money and could fight her in Court. She stated that she has always been led to believe that the home was a family home and that she could occupy it as such. She stated that she laboured on the improvement of the house to her detriment; that she did not invest in another house since she was led to believe that the house was a family house for all of them to live in and she believes that in all the circumstances the Claimant is estopped from claiming otherwise. She asked in her witness statement that the Court should deny the Claimant's claim and should make a declaration that the Claimant holds a portion of the family home on trust for her; that an inquiry be made into the extent of her beneficial ownership in the house; and that a declaration of her ownership be made in respect of her said interest, together with such further orders as the Court thinks fit.

[33] Under cross examination, Ms. La Mothe denied that her grandmother had made a Will and said that the Claimant did that on her own and made her own Will. She said that her grandmother could not have gone anywhere to make any Will because she did not have the strength.

[34] The seventh witness for the defence was Shelley Mitchell. She stated in her witness statement that she is the daughter of Yvette Mitchell; that she has lived on the land for all of her life; that she works at Point Salines and stays in St. George's during the week and returns home on weekends. She stated that the house in

dispute was always treated as a family house and it was renovated on that basis. She stated that the Claimant contributed to the construction of the house but it was always her (the witness's) understanding, both from the Claimant and from other members of the family who lived in the house, that this did not change the fact that it was the family home. She stated that they worked hard to build the upstairs portion of the house and that it was paid for, as far as she is aware, by monies sent by the Claimant and sometimes by herself and her cousin, Perry. She stated that she paid for the materials at Purcell alone for a long time. She said she was then employed at Point Salines Airport. She stated that sometime in the year 2000 the Claimant came to Grenada on vacation and called a family meeting at which she sought and obtained the family's permission to build downstairs the house so that when she and her family visited there would be enough space for them to occupy. Shelley stated that this arrangement continued without interruption until recently when she was told by her mother that she had been served with papers in which the Claimant said that she (the Claimant) was the owner of the house. She asked the Court to deny the Claimant's claim and stated that they do not have any other place to live and have always considered the upstairs of the house to be their home and acted as if it were, to their detriment. She stated further that the Claimant saw them doing so and never said otherwise until recently.

[35] Under cross examination, Shelley said that the Claimant paid for the labour for upstairs the house and they (meaning the other family members) paid for the materials. She denied that the Will admitted to probate was the Will of her grandmother, Eurita Mitchell.

[36] The eighth witness for the defence was Sherry-Ann Mitchell, the Third Named Defendant in Claim No. 179 of 2008. In her witness statement she stated that she is the daughter of Yvette Mitchell and that she was born and grew up in the house in dispute in this case. She stated that she had read the witness statements of Yvette Mitchell, Alban Mitchell, Shelley Mitchell and Claudine La Mothe and

vouches for the truthfulness of their contents in so far as they are within her personal knowledge.

[37] Under cross examination, Sherry-Ann said that prior to February 2008 she had been paying \$50 rent to the Claimant for her occupation of a room in the upstairs portion of the house. She said that sometimes she collected rent for the Claimant from other members of the family who were paying rent. She said that the Claimant paid for all of the labour for the construction of the upstairs portion of the house, as per the agreement, but that her money did not pay for all or a substantial portion of the materials also. She said that it is not true that \$250 was coming from the Claimant to pay Purcell and that she did not know what the Claimant was sending money for.

[38] The final witness for the defence and the final witness in the case was Shaddin Mitchell, the Second Named Defendant in Claim No. 179 of 2008. In her witness statement she stated that she is the daughter of Yvette Mitchell and that she was born and grew up in the house in dispute in this case. She stated that she had read the witness statements of Yvette Mitchell, Alban Mitchell, Shelley Mitchell and Claudine La Mothe and vouches for the truthfulness of their contents in so far as they are within her personal knowledge.

[39] Under cross examination, Shaddin said that prior to February 2008 she paid \$50 rent. She said that she is aware of the arrangements for the financing of the upstairs portion of the house in 1991. She said that she was 5 years old at the time. She said that the house is a family house and that her family did toil and did raise money to finance the construction of the upstairs portion. She said that she cannot say that the Will admitted to probate was the Will of her grandmother. She said that she was forced and pressured to sign a document that the Claimant brought to them and that there was no time to take advice before signing it. She said that she was forced to pay rent.

- [40] On the conclusion of the evidence of Shaddin Mitchell, the Court ordered that written submissions with authorities by way of closing arguments must be filed by both the Claimant and the Defendants by 4 p.m. on Thursday 6th August 2009. In the meantime, Counsel for the Claimant submitted three judicial authorities for the consideration of the Court – the Grenadian cases of Garfield Patterson v Maureen Knight et al and Cyril Mitchell et al v Errol Maitland et al and the English case of Eves v Eves [1975] 3 All ER 768.
- [41] The Court reserved its decision.
- [42] Both parties complied with the Order for the filing of written submissions with authorities on 6th August 2009.
- [43] The following facts appear not to be in dispute –
- (a) That Eurita Mitchell was the owner of a portion of land at Bonair or Bonaire in the Parish of St. Mark's in Grenada on which she had a wooden dwelling house.
 - (b) That in 1991 the wooden dwelling house was replaced by a concrete dwelling house, which was converted into a two-storey building in 2000 when a lower floor apartment was added to the house.
 - (c) That the lower floor apartment was built and occupied by the Claimant only with no involvement of her siblings or their children.
 - (d) That the upper floor apartment was constructed by a builder named Ashley Nedd who contracted with the Claimant to build the upper floor for her on a labour-only contract.
 - (e) That most of the building materials for the construction of the house were purchased via a credit arrangement with the firm of L. A. Purcell.
 - (f) That the credit arrangement with the firm of L. A. Purcell with respect to the materials for the construction of the upper floor apartment involved the

payment of a deposit to L. A. Purcell and the payment as well of a monthly sum of \$400.

- (g) That the Claimant was the person who made the payment of the deposit to L. A. Purcell (although the source of the funds is disputed) and she at least contributed to the payment of the monthly sum of \$400 to the firm (although the magnitude and frequency of the contribution is disputed).
- (h) That after the death of Eurita Mitchell a document purporting to be her Will was read by Alma O. Forsyth - named in the document as the executrix under the Will - in which it was stated that Eurita Mitchell left to the Claimant the house spot on which she (the Claimant) had built her house.
- (i) That this document was "proved and registered" in the Supreme Court of Grenada as the Last Will and Testament of Eurita Mitchell and on 21st February 2007 an Indenture was registered in the Deeds & Land Registry of Grenada vesting the house spot in the name of the Claimant.
- (j) That some of the Defendants paid rent to the Claimant in respect of their occupation of the upper floor of the house between 2005 and 2008.
- (k) That some of the Defendants continue to occupy the upper floor of the dwelling house up to the present time, though others are no longer in occupation of it.

[44] The following material facts alleged by one side or the other appear to be in dispute –

- (a) That the construction of the upper floor of the house was preceded by a family meeting, the attendees at which included the Claimant, her mother and some of the Defendants, at which meeting it was agreed to construct a family house, with the Claimant paying for the labour and the others paying for the building materials.
- (b) That the Defendants contributed voluntary labour towards the construction of the upper floor of the house and the building materials for its construction were paid for in whole or in part by some of the Defendants.

- (c) That Eurita Mitchell did not make a Will and the document admitted to probate was done by the Claimant.
- (d) That the agreement of some of the occupants of the house to pay rent to the Claimant was the result of pressure applied and threats made by the Claimant to her family members who were in occupation of the house.
- (e) That the legal estate in the property now vested in the Claimant should be held by her in trust for herself and the Defendants.

[45] The case then turns on a determination by the Court of the material facts in dispute between the parties.

[46] In terms of the first of the disputed facts, having seen and heard the twelve witnesses who gave evidence in this case and reviewed their testimony from their witness statements and their viva voce evidence in the witness box, this Court does not accept that there was a meeting at which it was discussed and agreed that the wooden dwelling house at Bonaire owned by Eurita Mitchell would be rebuilt with the Claimant paying for the labour and the Defendants paying for the materials and that the rebuilt house would become the common property of the family to be used by them as they like. The actions of the Claimant in engaging a builder to build a house for her, contracting with L. A. Purcell to establish a credit account for a substantial amount for which she was liable and with a surety brought in by her in the person of Mr. Albert Forsyth as a guarantor, shipping down household furniture and fittings from England for the house, transmitting money to Grenada from England to service the credit account, insuring the house in her name and paying the annual insurance premiums, all lead to the conclusion that the Claimant was intending to construct a house which would be occupied by her mother and the children and grandchildren of her mother, but that the house would be owned by her (the Claimant). The alternative conclusion that it was intended that the Claimant would do all of these things and that the house would be owned by either nobody or everybody is not really plausible, because the closest the Defendants reached to indicating who – according to their case – would own a

house apparently valued by a Government Department at \$461,000 was from the witness statement of Claudine La Mothe, who stated that: "It was always the intention of all of us who lived in the house, including my grandmother, that it was a family house and we could occupy it as such for as long as we liked."

[47] No claim of ownership could be solidly built on a foundation that anyone - whether children, grandchildren, great grandchildren or other relatives of Eurita Mitchell - who at some time might live or might have lived in a house would thereby become a part owner of some indeterminable share in a piece of valuable real estate in Grenada.

[48] In terms of the second of the disputed facts, the Court accepts the evidence of the Claimant and her witness, Ashley Nedd, that the upper floor of the house was built by Mr. Nedd for the Claimant and that he was the person responsible for supplying the labour for its construction. Any labour supplied by the Defendants was therefore either paid for or was inconsequential in terms of giving rights to anyone. The Court also accepts the evidence of the Claimant and her witness, Richlyn Phillips, that the building materials for the construction of the upper floor of the house were supplied on credit by the firm of L. A. Purcell at the behest of the Claimant, who was responsible for servicing that credit account. This evidence was corroborated by the Claimant's other witness, Mr. Ashley Nedd, and by several of the defence witnesses who acknowledged that the Claimant was sending money from England to service the credit account. The Court accepts too that any contributions made towards the servicing of the credit account by Shelley Mitchell, Perry Mitchell, Yvette Mitchell, or any other family member, were as per arrangements put in place by the Claimant for the servicing of the account, including through rental payments due to the Claimant by the occupants of the house.

[49] In terms of the third of the disputed facts, the Defendants have had ample opportunity to challenge the Will of Eurita Mitchell and have not legally challenged

it up to now. The Will has now been “proved and registered” and the Court has no choice at this stage other than to treat it as having been validly made.

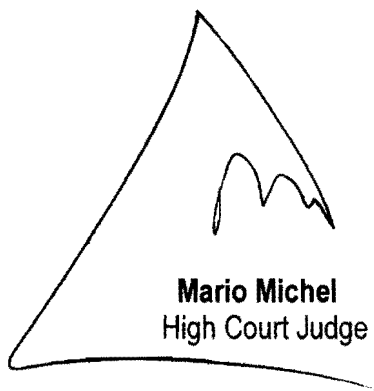
[50] In terms of the fourth of the disputed facts, the Court has difficulty in understanding how a small 69-year old lady can come in from England and single-handedly pressure and threaten a group of persons at their own home, all of whom are younger than her and most quite youthful and united in their opposition to her wishes, to sign a document agreeing to rent from her the house which they have always known to be their own. In any event, the signature of the lease by some of the Defendants was not the critical factor in tipping the balance of probability in favour of the Claimant's case.

[51] In terms of the fifth and final of the disputed facts, it is the view of this Court that though the trust may be a flexible legal instrument, it was never meant to work magic and cannot, on the facts of this case, be called into assistance by the Defendants to keep them in a home that they might have occupied for several years, but which was clearly built by someone else who no longer wishes to share occupation of it with them.

[52] Having determined all five disputed facts in favour of the Claimant, it only remains for me to order as follows:

- a. This Court declares that the Claimant is the owner and entitled to possession of a concrete two-storey dwelling house situated at Bonaire in the Parish of St. Mark's in the State of Grenada.
- b. The Defendants are to give vacant possession of the dwelling house or such part of it as is occupied by them to the Claimant no later than 31st May 2010.
- c. The Court declines, in the circumstances of this case, to make any order as to costs.

[53] In terms of the cost order, the Court notes that it was ordered at the Pre Trial Review of this matter that costs would be prescribed costs unless otherwise agreed and that Counsel for the Claimant in his closing submission asked for prescribed costs in favour of the Claimant on the value of the upper floor of the house. The Court considers however that, though it has decided the issues in this case in favour of the Claimant on a balance of probabilities, it does not mean that the Defendants were wholly unreasonable to have tried to hold on to the only home that the majority of them have known unless and until the Court determined it to be exclusively the property of the Claimant, and they should not therefore be penalised in costs for so doing. It is also worthy of note that the parties have peacefully co existed in the same house in a disputatious environment since 2005 with no evidence of any physical altercations between them and that the Defendants have evidently not sought to use either the strength of their numbers or their "home advantage" to initiate any physical altercation. The Court considers that a cost-neutral order and a three-month period for giving vacant possession to the Claimant should assist in the maintenance of this peaceful environment and may even conduce to some element of family reconciliation.

A handwritten signature in black ink, consisting of a large, stylized 'M' that loops around to the left and then back to the right, with a smaller, more fluid signature inside the loop.

Mario Michel
High Court Judge