

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2007/0530

IN THE MATTER OF THE REGISTERED LAND ACT CAP 374 OF THE LAWS OF ANTIGUA AND
BARBUDA REVISED EDITION 1992

AND IN THE MATTER OF AN APPLICATION FOR A RECTIFICATION OF THE LAND REGISTERED IN
ACCORDANCE WITH SECTION 140 OF THE REGISTERED LAND ACT

BETWEEN

MS. DELCINE THOMAS

Claimant

And

VICTOR WILKINS

(The Lawful Attorney of **TERESA LEWIS**,
And Administrator of the Estate of **MARY**

FELICIA THOMAS, The Administrator and sole
Beneficiary of the Estate of **MR. MALCOLM THOMAS**)

Defendant

Appearances:

Mr. Kendrickson Kentish and Mrs. Laurie Freeland-Roberts for the Claimant
Ms. Mary B. E. White for the Defendant

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2009: May 12, 29
June 09
October 29
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[1] **Blenman J:** This is a claim by Ms. Delcine Thomas against Mr. Victor Wilkins, in his capacity as the Attorney for Teresa Lewis, the latter who is the Administrator of the Estate of Mary Felicia Thomas (Mary Thomas), and the Administrator of the Estate of Mr. Malcolm Thomas.

[2] The claim is in relation to two parcels of land, namely, Parcel 399 and 400 of Block 34 2682A located at Falmouth and Bethesda (Parcel 399 and 400). It also concerns another

parcel of land, namely, Parcel 16 of Block 2682A which is also located at Falmouth and Bethesda (Parcel 16). Ms. Delcine Thomas seeks to have the Land Register rectified in relation to Parcels 399 and 400. She also seeks to be compensated by Mr. Victor Wilkins for monies that were obtained from the sale of Parcel 16.

Background

- [3] Ms. Delcine Thomas says that she is one of the grandchildren of Mr. George Thomas and Ms. Catherine Thomas. Her grandparents (George and Ms. Catherine Thomas) had four children namely Mr. Malcolm Thomas (deceased), Steadman Thomas (deceased), Allot Thomas (deceased) and Angela Thomas-Edwards. Mr. Steadman Thomas (deceased) was Ms. Delcine Thomas' father.

- [4] Ms. Delcine Thomas contends that, initially, the lands in question were owned by Mr. George Thomas and Ms. Catherine Thomas; thereafter, they were owned by her grandmother Ms. Catherine Thomas, the latter who died intestate in 1995.

- [5] Ms. Thomas complains that, in January 2007, it was brought to her attention that Parcels 399 and 400 were fraudulently transferred to her uncle Mr. Malcolm Thomas. This was done without the knowledge or consent of his siblings, who were also entitled to a share in the land. On his death, and since Mr. Malcolm died intestate, the parcels of land were transferred to his wife Mrs. Mary Felicia Thomas (deceased). Ms. Theresa Lewis is the Administrator of the Estate of Mrs. Mary Felicia Thomas. Mr. Victor Wilkins is Teresa Lewis' Attorney and the Administrator of Mary Thomas' Estate.

- [6] In relation to Parcel 16 of Block 34 2682A of Falmouth and Bethesda, Ms. Thomas says that investigations reveal that in 1957 the land was fraudulently transferred to Mr. Malcolm Thomas, as the Administrator for Ms. Catherine Thomas, who died in 1955. In 1991, the property was sold to a company called Co-Ventures and Developers Ltd.

- [7] Further, Ms. Delcine Thomas says that the Grant of Letters of Administration of Ms. Catherine Thomas' Estate to Mr. Malcolm Thomas, indicated that he was the "only lawful

child and heir at law". This was fraudulent since Ms. Catherine Thomas died leaving other children apart from Mr. Malcolm.

- [8] Ms. Thomas seeks an order from the Court for the rectification of the register in relation to Parcels 399 and 400. She calls in aid section 140(i) of the Registered Land Act (RLA) Cap 374 Laws of Antigua and Barbuda and says that the register should instead reflect the names of all of the children of Ms. Catherine Thomas, deceased, namely: Allot Thomas, Steadman Thomas and Angela Thomas-Edwards. In addition, she seeks a declaration that the children of Ms. Catherine Thomas (deceased) are the legal proprietors of Parcels 399 and 400.
- [9] Further, she seeks compensation for alleged loss of propriety rights and loss of income due to the sale of Parcel 16 which she says was improperly transferred by Mr. Malcolm Thomas.
- [10] The claim is vigorously opposed by Mr. Victor Wilkins, in his capacity as the Administrator of the Estate of Mary Thomas and the beneficiary of the Estate of Mr. Malcolm Thomas.
- [11] Mr. Wilkins denies that Mr. Malcolm Thomas unlawfully obtained the relevant lands. He says that Mr. Malcolm Thomas obtained the lands in 1977 when the Cadastral Survey was undertaken. Prior to that, Mr. Malcolm Thomas had openly worked the lands and used his resourcefulness to develop the land. This was with the full knowledge of his other siblings, who at no time ever disputed his ownership. Subsequently, Mr. Malcolm Thomas was registered as the owner of the lands. Accordingly, Mr. Wilkins denies that Mr. Malcolm Thomas obtained Parcels 399 or 400 fraudulently.
- [12] In addition, Mr. Wilkins is adamant that Ms. Delcine Thomas and her brothers Mr. Eustace and Mr. Linroy Thomas were well aware that Parcels 399 and 400 belonged to Mr. Malcolm Thomas. They are not being truthful in saying that it was only in January 2007 this was brought to their attention. In fact, part of the defendant's case is that Ms Delcine Thomas' siblings on several occasions tried to get Mr. Malcolm's widow, Mrs. Mary Felicia

Thomas, to give them a piece of the land and she consistently refused to do so. It was only after the death of Mrs. Mary Felicia Thomas that Ms. Delcine Thomas has sought to bring this claim against Mr. Malcolm Thomas' ownership and by extension Ms. Mary Thomas' ownership of the land.

[13] Mr. Wilkins maintains that both Parcels 399 and 400 were lawfully owned by Mr. Malcolm Thomas, deceased. Accordingly, on Mr. Malcolm's death the parcels were transferred on intestacy to his wife, Mrs. Mary Felicia Thomas, now deceased. Mr. Wilkins is also adamant that Parcel 16, also, was lawfully owned by Mr. Malcolm Thomas. Mr. Wilkins also disputes that Parcel 16 was unlawfully sold.

[14] He contends that the Court should strike out Ms. Delcine Thomas' claim since, among other reasons, she has no standing to file the claim.

Evidence

[15] Apart from her own affidavit, Ms. Thomas has caused two affidavits to be filed by her brothers Mr. Linroy Thomas and Mr. Eustace Thomas in support of her claim.

[16] In support of his defence, Mr. Victor Wilkins has filed an affidavit in opposition to Ms. Thomas' claim. In addition, Ms. Ernesta Bernadine Walker and Mr. Alfred Lewis have also filed affidavits supportive of his defence.

Issues

- [17] The issues that arise for the Court to determine are as follows:-
- a. Whether Ms. Delcine Thomas can properly bring this claim.
 - b. Whether Mr. Malcolm Thomas obtained the Letters of Administration fraudulently.
 - c. Whether Parcels 399 and 400 were transferred/registered in the name of Mr. Malcolm Thomas, deceased, fraudulently.
 - d. If so, should the Court order that the Land Register be rectified.

- e. Whether the Court should order compensation to Ms. Delcine Thomas for the sale of Parcel 16 of Block 34 2682A.
- f. Alternatively, whether Ms. Delcine Thomas' claim is barred either by virtue of the Statute of Limitation or Laches.

Mr. Kendrickson Kentish's Submissions:

Statute Barred

- [18] Learned Counsel Mr. Kendrickson Kentish admitted that where a person seeks recovery of land, they must bring their claim within twelve years from the date on which the right of action accrued to them **(s.17(1) Limitation Act 1997)**. This limitation period is postponed in the case of fraud **(s.32 Limitation Act)**. The parcels of land had always been used for agricultural purposes by Ms. Delcine Thomas' family since her grandparents were alive. Ms. Delcine Thomas only discovered the fraud of her uncle (Mr. Malcolm Thomas) in January 2007, hence the limitation period would have been activated from this latter date **(s.32 of the Limitation Act 1997)**.

Laches

- [19] Next, learned Counsel, Mr. Kentish, said that the defence of laches arises if two conditions are satisfied: First, there must be unreasonable delay on the part of the plaintiff in the commencement or prosecution of proceedings; and secondly, in view of the nature and consequences of that delay it must be unjust, in all the circumstances, to grant the specific relief that is in question. Prima facie, the time from which the length of delay is judged is the time at which the plaintiff became aware of the existence of the facts that gave rise to a right to the equitable relief in question. In order that the remedy should be lost by laches or delay, it is, if not universally, at all events ordinarily necessary that there should be sufficient knowledge of the facts constituting the title to relief. It is not ordinarily sufficient that if she were reasonably diligent in the examination of relevant matters she would have had sufficient knowledge or doubt. In support of his contention, Mr. Kentish referred the court to **Southern Developers Limited et al v The Attorney General of Antigua and Barbuda, HCVAP 2006/020A**.

- [20] Learned Counsel, Mr. Kentish, submitted that in the case at bar, there is no evidence of acquiescence on the part of Ms. Delcine Thomas to the defendant owning the lands. The Court should therefore not accept Ms. White's argument that the doctrine of laches arises so as to undermine Ms. Delcine Thomas' claim.

Fraud

- [21] Next, learned Counsel, Mr. Kentish, asked the Court to accept that Ms. Delcine Thomas only became aware of the fraud of her uncle, Mr. Malcolm Thomas, in January 2007. It would not be unjust, in all of the circumstances, for her to be compensated for her loss of proprietary rights and loss of income due to the sale of Parcel 16 or to rectify the land register for Parcels 399 and 400 in order to reflect who are the true owners.
- [22] Learned Counsel, Mr. Kentish, also dealt with the finality of the Adjudication Record. He said that it is subject to the provisions of the Registered Land Act CAP. 374 RLA (**s. 23 LAA**). Therefore, the finality of the Adjudication Record is subject to **s. 140(1) RLA** which allows for the rectification of the land register by the cancellation of any registration which was obtained by fraud. The fact that there has been a mistake (or, no doubt, the fraud, when fraud is in question) in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process. **Sylvina Louisien v Joachim Rodney Jacob, Privy Council Appeal No. 93 of 2007.**
- [23] Learned Counsel, Mr. Kentish, maintained that Mr. Malcolm Thomas obtained title to Parcels 399 and 400 under the adjudication process by fraud, and this act of fraud carried through to the registration process resulting in him being unlawfully registered as the owner of the parcels of land.
- [24] As a related matter, learned Counsel Mr. Kentish posited that fraud is proved when it is shown that a false misrepresentation has been made knowingly, or without belief in its truth, or recklessly, careless in this regard whether it be true or false referred the court to **Derry v. Peek [1889] 61 The Law Times Reports (Sept. – Feb. 1889-90) 265 at 276.** Ms. Catherine Thomas died in 1955 and Letters of Administration were granted in her

Estate to her son Mr. Malcolm Thomas as “the only lawful child and heir at law” of the deceased. Ms. Catherine Thomas had four children: Allot Thomas, Humphrys Malcolm Thomas, (“Steadman”) Thomas and Angela Thomas Edwards. Mr. Malcolm Thomas knew or definitely ought to have known that his parents had other children besides himself. Therefore, the Letters of Administration which were obtained by Mr. Malcolm Thomas in his mother’s estate were obtained fraudulently and thus ought to be revoked. Learned Counsel, Mr. Kentish, also referred the court to **s.11 Eastern Caribbean Supreme Court Act CAP. 1433 s.121(1)** of the English **Supreme Court Act 1981**.

Parcel 16

- [25] Turning his attention specifically to Parcel 16, Mr. Kentish said that as this Parcel was transferred into Mr. Malcolm Thomas’ name as Personal Representative of his mother, Ms. Catherine Thomas, and that he obtained the Letters of Administration in the Estate fraudulently, therefore, he obtained this parcel or land by fraud. Ms. Delcine Thomas is entitled to be compensated for the loss of her proprietary rights and loss of income due to the sale of this Parcel of land. Elaborating further, Mr. Kentish said that Mr. Malcolm Thomas obtained the Certificate of Title in his name in respect of this parcel in 1952 without the consent or knowledge of his other siblings. In addition, Mr. Kentish submitted that the property of Ms. Catherine Thomas ought rightfully to have been distributed equally amongst her children upon her death, as her husband had predeceased her. In support of her contention he referred the court to **s.4 (e) and (f) of the Intestates Estates Act CAP. 225. Laws of Antigua**.

- [26] Next, learned Counsel, Mr. Kentish, said that Mr. Victor Wilkins accepted under cross-examination that Mr. Malcolm Thomas was not the sole child of Mr. George and Ms. Catherine Thomas. He further acknowledged that if Mr. Malcolm Thomas had represented that he was the sole child of Mr. George and Ms. Catherine Thomas, then that would be false. Mr. Victor Wilkins acknowledged that he was aware that Ms. Angela Thomas, the sister of Mr. Malcolm Thomas, is still alive. Yet by his own admission, he has failed to account to her or any of the other beneficiaries for the proceeds of the sale of a portion of

the lands. This evidence is commended to the Court as sufficient proof of the fraud as pleaded.

Parcels 399 and 400

- [27] Learned Counsel, Mr. Kentish, said that when in 1984 Mr. Malcolm Thomas was issued the Land Certificate for the Parcels his title remained provisional. An inference can be drawn from these facts that even though Mr. Malcolm Thomas had acquired a Certificate of Title to the said Parcel in 1952 and a Land Certificate in 1984, the requirements for acquisition of land by prescription were not satisfied.

Rectification of the Register

- [28] Learned Counsel, Mr. Kentish, asked the Court to order the rectification of the register. The finality of the Adjudication Record is subject to the provisions of the Registered Land Act Cap 374. Therefore, the finality of the Adjudication Record is subject to section 140(1) of the Registered Land Act, which allows for the rectification of the land register by the cancellation of any registration which was obtained by fraud. Mr. Kentish said that the fact that there has been a mistake (or no doubt, the fraud, when fraud is in question) in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process. See **Sylvina Louisien v Joachim Rodney Jacob, Privy Council Appeal, No. 93 of 2007 at paragraphs 40-42.**

- [29] In the case at bar, learned Counsel, Mr. Kentish, argued that the fraud committed by Mr. Malcolm Thomas was a fraud on the adjudication process itself. The registration of Mr. Malcolm Thomas as the sole registered proprietor of the disputed land was also tainted by this fraud. Mr. Malcolm Thomas was not ‘the sole child and heir at law’ of his parents and any such averment by him was a deliberate falsehood from which he benefitted unlawfully. In this regard, the authorities relied upon by Ms. Delcine Thomas are distinguishable from the case at bar. Ms. Delcine Thomas is not circumventing the procedure laid down in the Land Adjudication Act but is challenging the basis upon which the Adjudication Record

was obtained as well as the first registration. See **Ecedro Thomas v Augustine Stouff et al, Civ. App 1 of 1993, BVI, per Byron CJ at pp 5-6.**

- [30] Learned Counsel, Mr. Kentish, maintained that insofar as Mr. Malcolm Thomas has obtained title to Parcels 399 and 400 under the adjudication process by fraud, that this act of fraud carried through to the registration process resulting in him being registered as the owner of the said parcels of land. Accordingly, the Court should order that the register be rectified.

Ms. Mary B. White's Submissions:

Locus Standi

- [31] Learned Counsel, Ms. White, first addressed the issue of whether Ms. Delcine Thomas could properly bring the claim. Learned Counsel, Ms. White, said that Ms. Delcine Thomas, as a child of Steadman Thomas, deceased, undoubtedly claims interest in the Estate of Ms. Catherine Thomas. That beneficial interest, however, must be derived from the Estate of Steadman Thomas, whom Ms Delcine Thomas asserts is entitled to a one-third share of her grandmother's Estate. Ms. Thomas confirmed during cross-examination that her father's Estate has not been administered. Ms. White said that the Administration of Estates or matters of succession are governed, in Antigua and Barbuda, by the following statutes: These are sections 11 and 12 of the Eastern Caribbean Supreme Court Act, Chapter 143 of the Laws of Antigua and Barbuda (Revised Edition) 1992, the Intestates Estates Act, Chapter 225 of the Laws of Antigua, the Wills Act, Chapter 473 of the Laws of Antigua and Parts 67 and 68 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

- [32] Also, Learned Counsel, Ms. White, referred the Court to section 11 of the Intestates Estates Act which states as follows:

'11. The enactments schedule specified in the Schedule do not apply in respect of the intestate estate of a person dying before the first day of January, 1987.

(1) In section 2 of this Act, the definitions of "brother" or "sister", "child" or "issue" and "father".

(2) Section 4 of this Act as substituted by section 3 of the Intestates Estates (Amendment) Act 1986.

(3) Section 4 of the Intestate Estates (Amendment) Act 1986.

(4) Section 10 of this Act.”

[33] Learned Counsel, Ms. White, said that Mr. George and Ms. Catherine Thomas died in the 1940's and 1955 respectively. Mr. Steadman Thomas died in 1986. The Intestates Estates Act therefore is not applicable to these Estates. One must therefore look to section 11 of the Eastern Caribbean Supreme Court Act, which states as follows:

“11. The jurisdiction vested in the High Court in Civil proceedings, and in Probate, Divorce and Matrimonial Causes, shall be exercised in accordance with the provisions of this Act and any other law in operation in Antigua and Barbuda and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice in England.”

[34] Learned Counsel, Ms. White, said that in the circumstances, the practice in the Eastern Caribbean has been to employ the authorities of **Tristram and Cootes** and the **Law of Succession, by Parry & Clark**; similar matters are governed by the Supreme Court Act of the United Kingdom. A person can only bring an action on behalf of an Estate pursuant to rights obtained through an Estate if a grant is obtained. Learned Counsel, Ms. White, posed the following question: Is Ms. Delcine Thomas the Administrator of Steadman Thomas' Estate? The answer is “no”, since she said in cross-examination that her father's estate was not administered. No other sibling witness has represented himself to be an Administrator thereof.

[35] By section 9 of the Administration of Estates Act 1925 (United Kingdom), “where a person dies intestate his real and personal estate, until administration is granted in respect thereof, shall vest in the Probate Judge.” In the case of **Ingall v. Moram [1944] KB 160** the plaintiff did not take out letters of administration to his son's estate until nearly two months after the issue of the writ. The Court of Appeal held that the action must fail because the plaintiff had no title to sue when he issued the writ. The son's cause of action

for negligence was vested in the father when he took out letters of administration to his son's estate. Indeed, at page 163 paragraph (b) Administration – Parry & Clark states “a person entitled to administration has no power to do anything as administrator before letters of administration are granted to him. He derives his authority solely from his appointment as administrator by the court.”

- [36] Learned Counsel, Ms. White, said that Ms. Delcine Thomas claims a beneficial interest in the Estate of Steadman Thomas. On the 13th day of September 2007, she had not taken out Letters of Administration. The situation at trial was the same. In the circumstances, learned Counsel, Ms. White, invited the Court to find that Ms. Delcine Thomas has no locus standi to bring the action.

Grant of Letters of Administration to Mr. Malcolm Thomas

- [37] Next, learned Counsel, Ms. White, in relation to the Letters of Administration, stated that if however, the Court finds that Ms. Delcine Thomas does in fact have locus standi in this action, the question to be raised is whether the Court can act where the allegation raised is of a fraudulent grant to Mr. Malcolm Thomas without there first being a trial to revoke the grant? At pages 194 and 195 of Parry & Clark (12,13) under the caption Section 2: The Revocation of Grant, a ground for revocation was that a grant was wrongly made. The learning further provides that, “usually a grant is wrongly made as a result of a false statement by the grantee whether made fraudulently, or in ignorance of the truth”. In the case at bar, Ms. Delcine Thomas alleges that Mr. Malcolm Thomas made a fraudulent statement in obtaining the Letters of Administration of his mother's Estate. More particularly, that he alleged that he was the “only lawful child and heir at law”, thus entitling him to his mother's estate. Ms. White admitted that on the face of the grant, and without more, the statement does appear to be false. However, there is no evidence before the Court that any action had commenced pursuant to Parts 67 and 68 of the CPR to revoke the grant to Mr. Malcolm Thomas. There is no evidence before the Court on which it can be properly concluded that Mr. Malcolm Thomas made that false statement.

Fraud

- [38] Next, learned Counsel, Ms. White, asked the Court to find that Ms. Delcine Thomas has not provided the Court with any reliable evidence on which it can be properly concluded that Mr. Malcolm Thomas committed fraud in obtaining title to either Parcels 399, 400 or 16. Ms. White urged the Court to find that Ms. Delcine Thomas has failed to lead any evidence to prove that Mr. Malcolm Thomas committed any fraud whatsoever and the Court ought to strike out Ms. Delcine Thomas' claim.
- [39] Alternatively, learned Counsel, Ms. White, argued that even if the Court were to conclude that Mr. Malcolm Thomas committed fraud, which is denied, the Court must go on to consider whether Ms. Delcine Thomas' claim is barred by virtue of the operation of either the Statute of Limitation or the operation of the principle of laches.

Statute of Limitation

- [40] The limitation of action is governed by the Statute of Limitation Act No.8 of 1997. Learned Counsel, Ms White, admitted that there is no limitation allowed where fraud is alleged. Since the administration period runs backwards from 31st December 1986, then application of Section 4(3) of the Limitation Act 1939 states that an action by a beneficiary to recover any land is barred after the expiration of 12 years from the date on which his right of action accrued. The right of action accrued in 1955 when Ms. Catherine Thomas died. This is some 52 years ago. Ms. Delcine Thomas is therefore statute barred as to the limitation period. However, section 19(1) of the Limitation Act 1939 states that "no period of limitation applies to an action by a beneficiary
- (i) in respect of any fraud to which the personal representative was a party or privy;
or
 - (ii) to recover from the personal representative property or the proceeds thereof in his possession or previously received by him and converted to his use".
- [41] Ms. White strongly urged the Court to find that no fraud has been proved against Mr. Malcolm Thomas and therefore the exception as stated in section 19(1) does not apply in this matter.

Laches

- [42] Turning her attention to the principle of laches, learned Counsel Ms. White asked; what though is the position were the Court to find that a fraud was in fact perpetrated against Delcine's father (and his other siblings)? Ms. White implored the Court to consider the doctrine of laches before passing judgment. Laches is an equitable doctrine. Its "locus classicus" is found in the celebrated case of **The Lindsay Petroleum Company v Prosper Armstrong Hurd, Abram Farewell and John Kemp [1873-1878] Law Reports 5 Privy Council 221 (30, 31)**. It was approved later by the Judicial Committee of the Privy Council in the case of **Emile Erlanger and Others v The New Sombrero Phosphate Company and Others [1877-1878] Law Reports, Volume 3, Appeal Cases (House of Lords/Privy Council) at 1279, (37)** the principle states thus:

"The doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. But in every case if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defense must be tried upon the principles substantially equitable. Two circumstances are always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

- [43] Learned Counsel, Ms. White, submitted that where fraud is alleged, the onus is on the defendant, if he alleges Laches on the part of the claimant, to show when the claimant acquired the knowledge of the truth and to prove that she knowingly forbore to assert her right. Ms. White submitted, in the case at bar, that knowledge ought to have been acquired since 1955 upon the death of Ms. Catherine Thomas or alternatively, in 1977 during the Cadastral Survey as governed by the Land Adjudication Act, Chapter 234 of the Laws aforesaid and not in the year 2007, as Ms. Delcine Thomas asserts.
- [44] In support of her argument, learned Counsel, Ms. White, said that an analysis of the evidence before the Court will show that Ms. Delcine Thomas' witnesses, Mr. Linroy

Thomas and Mr. Eustace Thomas, claimed to have been actively involved in the agricultural exercise, working the ground. This activity lasted until the “nineteen sixties/seventies”. Nobody, except Mr. Malcolm Thomas, took any action as regards the Estate of Ms. Catherine Thomas.

[45] Then the Cadastral regime came on stream in the 1970's. This has been referred to as “the Torrens System” taking its name from Sir Robert Torrens of South Australia who devised the system. The nation of Antigua and Barbuda adopted this system which was intended to provide for the adjudication of rights and interests in land. This system was given effect by the introduction of the Land Adjudication Act now Chapter 234 aforesaid. This new regime presented an unsurpassed opportunity for individuals with an expectancy of ownership of land to go forward and assert their rights pursuant to the provisions of the relevant legislation.

[46] The Form relating to the Adjudication Record affecting Mr. Steadman Thomas was completed on the 24th May, 1977. The related Land Certificate No. 1993/80 was received by Ms. Delcine Thomas on the 18/6/80. So Steadman Thomas went forward in 1977 and Ms. Delcine Thomas became involved in 1980. Having gone this far in the new regime, what stopped Mr. Steadman Thomas and Ms. Delcine Thomas from instituting their claim to an entitlement in the property of their parents and grandparents? Ms. White submitted that by so doing, they would have been alerted to the fact that since 1952 and 1957, Mr. Malcolm Thomas was already clothed with title to the Red Hill and Piccadilly parcels of land and that he had already applied for and received a Grant of Letters of Administration of the Estate of Ms. Catherine Thomas.

[47] The parcels were subsequently registered in Mr. Malcolm Thomas' name pursuant to the Registered Land Act. Learned Counsel, Ms. White, asked the Court to find, based on the credible evidence presented, that both Mr. Steadman Thomas and Ms. Delcine Thomas were well aware of Mr. Malcolm Thomas' claim and ownership of the parcels of land for several years. Both of them sat back and did nothing for several years. Now, Ms. Delcine Thomas wants the Court to believe that it was only in 2007 that she became aware that

Mr. Malcolm Thomas had caused the parcels of land to be registered in his name. Learned Counsel, Ms. White, asked the Court to reject that evidence as untrue and unreliable.

- [48] In view of all of the above, learned Counsel Ms. White submitted that Ms. Delcine Thomas has failed to prove her claim against Mr. Victor Wilkins. The Court should therefore dismiss her claim.

Court's analysis and conclusions

- [49] The Court has given deliberate consideration to the lucid submissions of both learned Counsel. Also, the Court has paid regard to the evidence that was adduced on behalf of the claimant and the defendant. Based on the evidence presented, there is no doubt that while Ms. Delcine Thomas is an obviously intelligent lady. She was far from generous with the truth. Her brothers, Mr. Linroy and Mr. Eustace Thomas, who also testified in support of her claim were not credible nor reliable. Throughout their evidence they contradicted each other on many important matters that go to the root of the case. They did not paint a very good picture. In contradistinction, I find Mr. Victor Wilkins, even though a man of limited intelligence, to be very honest and straightforward. At no time during his evidence did the Court come to the conclusion that he was anything other than forthright. So too were the other witnesses for the defence, Ms. Walker and Mr. Lewis; both of whom struck the Court as simple, honest persons with no interest to serve. There is no doubt that their evidence was credible and reliable. In addition, their evidence was consistent with Mr. Wilkins' evidence.
- [50] Accordingly, where there is any conflict between the evidence adduced on behalf of Ms. Delcine Thomas and that adduced on behalf of the defendant, Mr. Wilkins, the Court prefers and accepts that of the defence.

Parcels 399 and 400

[51] It is clear to the Court that at some period of time that both George and Catherine occupied the lands. Equally, the Court accepts that Mr. Malcolm Thomas was registered as the proprietor of Parcels 399 and 400, together with Parcel 16. There is no doubt that over the years that he treated the Parcels as his own, and this was accepted by his siblings who never disputed his ownership. Indeed, the Court has no doubt that Ms. Delcine Thomas, Mr. Eustace Thomas and Linroy Thomas were well aware that the Parcels 399 and 400 were registered in Mr. Malcolm's name and this was well before January 2007. Further, I am satisfied that both Mr. Eustace Thomas and Mr. Linroy Thomas well knew that Mr. Malcolm Thomas had died intestate leaving the parcels of land to Mrs. Mary Felicia Thomas.

[52] I am equally satisfied that long before January 2007, Mr. Eustace Thomas had approached Ms. Mary Thomas and sought to get her to give him a piece of the land but that she had refused.

[53] At this juncture, it is important that the Court underscores the fact that an important plank in Ms. Delcine Thomas' claim is that the late Mr. Malcolm Thomas, in having Parcels 399 and 400 registered in his name, defrauded (her father) Steadman Thomas and his other siblings. Accordingly, she is of the view that the Court should lend its assistance in remedying this wrong.

Parcel 16

[54] On the evidence, the Court is equally satisfied that at some time previously, Mr. Malcolm Thomas treated and dealt with what is now parcel 16 as if it were his own.

[55] However, before the Court could properly determine any of the main issues that arise, it must be ascertained whether Ms. Delcine Thomas can properly bring this claim. This brings me now to address the principle of locus standi.

Locus standi

- [56] Indeed, it seems to the Court that the first hurdle that Ms. Delcine Thomas has to cross is that raised by Mr. Wilkins, namely, her locus standi.
- [57] It is the law that a person who wishes to institute a claim on behalf of an Estate, at the very least, must obtain a grant from the Court. The Court accepts the submissions advanced by learned Counsel, Ms. White, that, insofar as Ms. Thomas conceded during cross-examination that Letters of Administration have not been obtained in relation to Steadman Thomas' Estate, through whom she claims, Ms. Delcine Thomas cannot properly institute the present claim. It is noteworthy that there is no evidence that the Estate of Steadman Thomas has been administered.
- [58] Accordingly, I am not of the view that the claimant, in her own capacity, can properly maintain the present claim. This is fatal.
- [59] Even if the Court were wrong to so conclude, the Court now proposes to specifically address the other issues that have been raised.
- [60] First, the Court proposes to address the issue of fraud.

Fraud Parcel 16

- [61] The Court is of the considered view that Ms. Delcine Thomas has not led any credible or reliable evidence in support of the contention that Mr. Malcolm Thomas fraudulently obtained the Letters of Administration to his mother's estate. This, to my mind, is fatal to the urging of Learned Counsel, Mr. Kentish, that Mr. Malcolm Thomas acted fraudulently. While the Court accepts, and it has been conceded by Ms. White that it is false, insofar that it is stated on the Letters of Administration that Mr. Malcolm Thomas is "the only heir child and heir at law" of the Estate of Ms. Catherine Thomas, there is no way of the Court knowing whether that was an assertion that was made by Mr. Malcolm Thomas in order to obtain the Letters of Administration. To put the matter shortly, Ms Delcine Thomas has not

provided the Court with the evidential basis for reaching that conclusion. See **Louisen v Rodney Jacob** *ibid*.

- [62] The Court will briefly examine the law as it relates to fraud.
- The law in relation to fraud is clear. In order to set aside a decree allegedly obtained by fraud, it is not sufficient merely to allege fraud without giving the particulars; the fraud must relate to matters which *prima facie* would be a reason for setting the judgment aside if they were established by proof, and not to matters which are merely collateral. See **Halsbury's Laws of England 4th Ed. Vol. 26 para. 560**.
- [63] The Court finds that, in the case at bar, there is no proper evidential basis to support the allegation that Mr. Malcolm Thomas was able to obtain provisional title to Parcels 399 and 400 on any fraudulent basis. This is the gravamen of Ms. Delcine Thomas' claim. It is passing strange that apart from what appears to be an erroneous statement on the face of the Letters of Administration and a form that was apparently utilized in the Land Adjudication process, Ms. Delcine Thomas has provided the Court with no credible evidence to buttress her contention of fraud.
- [64] Accordingly, the Court is of the view that Ms. Delcine Thomas is unable to succeed in prosecuting her claim on this additional ground – **See Louisen v Rodney Jacob** *ibid*.
- [65] It bears repeating that in order to prove that a fraud was committed, it is incumbent on Ms. Delcine Thomas to specifically lead credible and reliable evidence of the exact nature of the fraud and how it was perpetuated. Ms. Thomas has failed to meet the standard required to establish any fraud on the part of Mr. Malcolm Thomas. Indeed, the weight of the documentary evidence, in the Court's respectful view, is far from sufficient to reach the threshold required to prove that Mr. Malcolm Thomas obtained the Letters of Administration to Ms. Catherine Thomas' Estate by fraudulent means. With the greatest of respect, it seems to the Court that it would be impossible for the Court to properly conclude that Mr. Malcolm Thomas has committed any fraud in having parcel 16 registered in his name. The documentary evidence on which the claimant wishes the Court to rely in order

to substantiate the allegation is very meager. In fact, it is a single document in which it is stated that Mr. Malcolm Thomas is stated to be “the only lawful heir”. Ms. Delcine Thomas cannot properly expect the Court to rely on that document without more, in order to conclude that Mr. Malcolm Thomas committed a fraud. That statement is equally consistent with the recording officer making an error. There were no copies of any declaration or affidavits to that effect which Mr. Malcolm Thomas may have signed, placed before the Court.

- [66] Accordingly, and as stated earlier, the Court is satisfied that there are no sufficient facts from which the Court could properly draw the inference that Mr. Thomas committed a fraud.

Parcels 399 and 400

- [67] For the sake of completeness, it is important that the Court makes clear that it accepts the arguments advanced by Learned Counsel, Ms. White, insofar as she has advocated that Ms. Delcine Thomas has failed to establish any fraud committed by Mr. Malcolm Thomas.
- [68] In fact, Ms. Delcine Thomas has failed to lead any credible evidence to substantiate her contention that Mr. Malcolm Thomas fraudulently obtained titles to Parcels 399, 400 and 16. An allegation of fraud, quite apart from being specifically pleaded, must be proven and the standard of proof required is very stringent, as alluded to earlier.

Laches

- [69] Also, the Court finds it very noteworthy that Ms. Delcine Thomas is familiar with the process of the Cadastral Survey which operated in 1977 and the subsequent registration process, yet she expects this Court to believe that a woman of her vast intelligence never sought to ascertain in whose name Parcels 399 and 400 were registered.
- [70] In passing, I state that it is also of significance that Ms. Thomas has seen it fit to institute this claim long after Mr. Malcolm Thomas has died, and importantly after the death of his wife, Mary Felicia Thomas, to whom the property was transmitted. Learned Counsel, Ms.

White, quite correctly questions the timing of Ms. Delcine Thomas' claim, in view of the fact that several years have elapsed since the death of Mr. Malcolm and Mrs. Mary Felicia Thomas and the date on which the claim at bar was filed. I do not for one moment believe that it was in 2007 that Ms. Delcine Thomas became aware that the Parcels were registered in Mr. Malcolm Thomas' name.

[71] For the sake of completeness, it is opposite for the Court to emphasize that even if the Court is wrong in its conclusion, it is of the respectful view that the doctrine of laches has tremendous relevance to the case at bar and would operate so as to prevent the Court from granting any relief to the Claimant.

[72] In view of the above conclusions, it is therefore unnecessary for the Court to address the other issues that have been raised.

Conclusion

[73] In view of the foregoing, Ms. Delcine Thomas has failed to prove her claim against Mr. Victor Wilkins.

[74] Accordingly, it is ordered that Ms. Delcine Thomas' claim against Mr. Victor Wilkins, the lawful Attorney of Teresa Lewis and Administrator of the Estate of Mary Felicia Thomas, is dismissed together with prescribed costs, unless otherwise agreed.

[75] The Court gratefully acknowledges the assistance of both Learned Counsel.

Louise Esther Blenman
High Court Judge