

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 460 OF 1998

BETWEEN:

HILARY BOWMAN

AND

ANNE KNIGHTS

Claimants

AND

**FAITHMAN JOSEPH
IFIELD PHILINGTON JOSEPH
JOHN FORESMAN**

Defendants

Appearances:

Mr. Parnel Campbell Q.C. and Mr. Ronald Burch-Smith
for the Claimants
Mr. Olin Dennie for the Defendants

2003: April 14, 15, 28, 29
2004: May 13

JUDGEMENT

- [1] **BRUCE-LYLE, J:** Mr. Hilary Bowman and Ms. Anne Knights, the Claimants in this Suit are brother and sister. Under and by virtue of an Indenture dated the 3rd day of July 1992, and made between Filius Ackie of Ashton, Union Island in the State of St. Vincent and the Grenadines, and Cleveland Ackie of Campbell, Union Island, and registered as Deed Number 2081 of 1992, a parcel of land was conveyed by the said Filius Ackie by Deed of Gift to Cleveland Ackie for an estate in fee simple absolute in possession and being approximately two acres of land situate at Richmond, Union Island and delineated as Lot No. 13.

- [2] Under and by virtue of an Indenture dated the 4th day of August 1995 and made between Cleveland Ackie and Hilary Bowman, (the first named Claimant) and registered as Deed No. 2636 of 1995, Hilary Bowman became seized for an estate in fee simple absolute in possession of 21,780 square feet of land situate at Richmond, Union Island, being a part of Lot Number 13 and delineated on Plan GR5/121.
- [3] Under and by virtue of an Indenture dated the 1st day of December 1995 and made between Cleveland Ackie and Anne Knights, (the second named claimant) and registered as Deed Number 3948 of 1995, and by Rectification order of the High Court of St. Vincent in High Court Action Number 191 of 1996 dated the 29th May 1996, registered as Deed Number 2584 of 1996, Anne Knights became seized for an estate in fee simple absolute in possession of a parcel of land situate at Richmond, Union Island being a portion of Lot Number M13 on Plan GR6/27.
- [4] Under and by virtue of an Indenture dated the 3rd day of December 1996 and made between Anne Knights and Hilary Bowman and registered as Deed Number 4326 of 1996, Hilary Bowman became seized for an estate in fee simple absolute in possession of 21, 980 square feet of land at Richmond, Union Island and delineated on Plan GR6/27.
- [5] Under and by virtue of an Indenture dated the 30th day of April 1996 and made between Cleveland Ackie and Anne Knights and registered as Deed Number 1744 of 1996, Anne Knights was seized for an estate in fee simple absolute in possession of 41, 505 square feet of land situate at Richmond, Union Island and delineated on Plan GR4/159.
- [6] All these lands in the possession of the Claimants as per the above-mentioned Deeds are contiguous lands.
- [7] In or about October 1998, the first Defendant Faithman Joseph, entered the said lands and commenced and carried out acts of ownership which the Claimants considered

acts of trespass. These acts were (1) digging holes along the boundaries of the Claimants' lands. (2) Erecting fence posts in the holes dug along the boundaries of the Claimants' lands. (3) Declaring to witnesses that he Faithman Joseph intended to fence and enclose the said lands and to exercise acts of possession and ownership thereon.

[8] But by virtue of a Deed of Conveyance dated the 24th day of April 1994 and registered as Deed Number 1006 of 1995, defendants Ifield Philington Joseph and John Foresman purportedly became seized as joint owners of two acres and eleven poles of land at Richmond, Union Island. These lands are virtually identical to lands owned by and in the possession of the Claimants.

[9] The Claimants contend that this purported transfer of the said lands in issue to Ifield Joseph and John Foresman by one Katherine Ann Millar (nee Danielson) by virtue of Deed number 1006 of 1995, was invalid and ineffective in law to convey the lands described therein or any other lands, in that when the purported vendor, Katherine Ann Millar (nee Danielson) applied in June 1993 for a Grant of letters of Administration to the Estate of Jane Ruth Danielson, who died intestate on 13th May 1974, the title to the lands mentioned had already been extinguished by virtue of the provisions of the Limitation Act Chapter 90 of the Revised Laws of Saint Vincent and the Grenadines 1990. The Claimants therefore contend that the Defendants have no good or valid root of title to the disputed lands.

[10] On the 30th day of October 1998 and also on the 2nd day of December 1998 by virtue of an ex parte Interlocutory Injunction, the Defendant Faithman Joseph was restrained from interfering with or going onto or remaining on or trespassing on or fencing or enclosing or otherwise carrying out or attempting to carry out any acts of ownership in respect of the disputed lands at Richmond, Union island as described in Deeds of Conveyance Numbers 2636 of 1995; 4326 of 1996; 3948 of 1995; 2584 of 1996; and 1744 of 1996, until trial of this action or until further order.

[11] The Claimants contend from all of the above that they have suffered loss and damage and therefore claim –

- (1) A declaration that the Defendants are not entitled to interfere with or go onto or remain on or trespass on or fence or enclose or carry out or attempt to carry out any acts of possession or ownership on to or in respect of the Claimants lands at Richmond, Union Island as described in the schedules to the Deeds of Conveyance aforementioned.
- (2) An order that the registration of Deed of Conveyance Number 1006 of 1995 dated 24th April 1994 be cancelled.
- (3) Damages for trespass.
- (4) An injunction to restrain the Defendants whether by themselves or by their servants and or agents and whether acting as principal or agent or howsoever otherwise, from doing any or all of the acts, deeds and things described earlier in this judgement.
- (5) Such further or other relief as to the court might seem just.
- (6) Costs.

DEFENDANTS CASE

[12] In their Defence, the Defendants contend that by virtue of a Deed of Conveyance registered as Deed Number 1006 of 1995, Ifield Joseph and John Foresman became the owners of two acres and eleven poles of land being part of Lot Number 13 at Richmond, Union Island, with the first Defendant Faithman Joseph being the agent with respect to the said parcel.

[13] The Defendants further contend that Ifield Philington Joseph and John Foresman who both reside overseas purchased the said parcel of land from one Katherine Ann Millar nee Danielson for the sum of \$20,000 and that the said parcel of land formed part of the said Estate of Jane Ruth Danielson, who died intestate on the 13th May 1974, and on the 19th January 1994, a Grant of Letters of Administration being Grant Number 20

of 1994 was issued to Katherine Ann Millar nee Danielson by the High Court of Justice of the State of Saint Vincent and the Grenadines.

[14] The Defendants stated that the purported transfer to the Plaintiffs of lands described in Deed Number 2081 of 1992 which indicate no root of title is invalid as the donor Filius Ackie was never the owner of the lands described in the said Deed, as the same formed part of the Estate of Jane Ruth Danielson deceased.

[15] The Defendants further stated in their defence that as a consequence of the purported transfer to the Claimants by Cleveland Ackie, the son of Filius Ackie of 21,980 square feet of land at Richmond, Union Island by virtue of Deed Number 2636 of 1995, is invalid; and that also the transfer to the claimant Anne Knights of 41, 505 square feet of land by virtue of Deed Number 1744 of 1996, together with Deed numbers 2584 of 1996 and 4326 of 1996 is likewise invalid.

[16] As a consequence the Defendants deny as alleged by the Claimants, that the title of the vendor Katherine Ann Millar nee Danielson from whom the second and third Defendants purchased the lands described in Deed Number 1006 of 1995 had been extinguished by virtue of the provisions of the Limitation Act, Chapter 90 of the Revised Laws of Saint Vincent and the Grenadines 1990, and further state that Filius Ackie who is the Claimants alleged predecessor in title was residing and working in Trinidad as a Building Contractor since in the mid 1970's up until the mid 1980's, and was never in possession of the lands which he purported to sell to the Claimants and therefore has no good or valid root of title to the said lands. Further to that, the Defendants stated that Filius Ackie never exercised acts of ownership with respect to the said lands and neither had he ever paid land taxes for same, as at all material times one Thomas Gellizeau was the agent for the said Katherine Ann Millar.

[17] The Defendants therefore counterclaimed

(1) For an Order of Cancellation in respect of Deeds Number 2081 of 1992; 2636 of 1995; 3948 of 1995; 2584 of 1996 and 1744 of 1996.

- (2) A Declaration that the land described in Deed Number 2081 of 1992 is in fact the property of Ifield Philington Joseph and John Foresman by virtue of Deed Number 1006 of 1995 and dated the 24th April 1994.
- (3) An order that Deed Number 1006 of 1995 is a valid Deed of Conveyance by virtue of which Ifield Philington Joseph and John Foresman became the lawful owners as joint tenants of the lands described in the schedule thereto.
- (4) Damages for trespass.
- (5) Such further or other relief as the court thinks just.
- (6) Costs.

ISSUES

[18] In a nutshell, the issues for this court to determine are as follows: -

- (1) Whether by the evidence adduced the court can find that Filius Ackie had been in adverse possession of the said lands and whether he did in fact exercise acts of ownership with respect to the said lands.
- (2) Whether Filius Ackie and his son Cleveland Ackie, therefore had a proper root of title to the said lands in issue and therefore whether the sale of those lands to the Claimants were valid;
- (3) Whether the purported transfer to the second and third Defendants by one Katherine Ann Millar nee Danielson by virtue of Deed Number 1006 of 1995 was invalid and ineffective in law to convey the lands described therein which are virtually identical to lands owned by and in the possession of the Claimants.

FACTS NOT IN DISPUTE

[19] It is indeed not in dispute between the parties to this Suit that the land in issue Lot Number 13 had been conveyed to Jane Ruth Danielson by Deed Number 1667 of 1969; and further that Jane Ruth Danielson executed a Power of Attorney in favour of

her husband John Gustav Danielson on 8th October 1970 and registered as Number 66 of 1970.

[20] It is also not in dispute that Jane Ruth Danielson died interstate on 13th May 1974 and that Lot 13 was never conveyed to Grenadines Development Limited.

[21] It is also not in dispute that John Gustav Danielson left Union Island in 1974 or 1975 and never returned to the State.

[22] And that by a Deed of Gift Number 2081 of 1992 dated 3rd July 1992, Filius Ackie purported to convey Lot 13 to his son Cleveland Ackie; and that an application for Letters of Administration to the Estate of Jane Ruth Danielson was filed on 4th June 1993, by Katherine Ann Danielson, one of the two daughters of the said Jane Ruth Danielson (deceased).

[23] There is also no dispute that between May 1974 and January 1994, Lot 13 remained unadministered property, the paper title owner of same having died in 1974; and that on 19th January 1994, a Grant of Letters of Administration was issued to Katherine Ann Danielson as Administratrix of the Estate of Jane Ruth Danielson, in respect of several parcels of land in Union Island including Lot 13.

[24] There is again no dispute that by a Deed of Conveyance Number 1006 of 1995 dated 24th April 1994, the said Administratrix purported to sell Lot 13 to the second and third Defendants for the sum of \$20,000; and by Deeds of Conveyance – 2636 of 1995 dated 4th August 1995; 3948 of 1995 dated 1st December 1995; 1744 of 1996 dated 30th April 1996, Cleveland Ackie purported to sell Lot 13 after subdivision to the Claimants for a total of \$116, 000.

[25] And finally, it is also not in dispute that in October 1998 the first Defendant entered Lot 13 on behalf of the second and third Defendants and commenced exercising acts of

ownership thereon until restrained by an Interlocutory Injunction dated 27th November 1998 from doing so.

EVIDENCE

- [26] At the trial the Claimants relied heavily on the evidence of Mr. Hilary Bowman, Ms. Anne Knights, Filius Ackie and Mordechai Claudius Ackie. The Defence relied on the witness statements of Ifield Joseph and Faithman Joseph, both of whom were not cross-examined and the evidence of Thomas Gellizeau and Mr. Sylvester Raymond-Cadette an attorney-at-law, after which submissions were heard in addition to the skeleton arguments filed by Counsel.

EXAMINATION OF ISSUES

- [27] Whether Filius Ackie had been in adverse possession of the said lands and did in fact exercise acts of ownership with respect to the said lands - It would be prudent at this stage to state clearly that Thomas Gellizeau, witness for the Defendants was not a party to these proceedings and was not the owner of Lot 13, which is in issue. His evidence touched mainly on the fact that from since the Danielsons came into ownership of those lands as he claimed, he was the caretaker on behalf of the Danielson family. He testified that he paid taxes for those lands but did not provide any proof of such, so as to show some form of control over the said lands. He also never gave any evidence of having exercised acts of ownership over Lot 13, but only that he overlooked Lot 13 on behalf of the owners.
- [28] Furthermore the defendants have not pleaded that anyone acting on behalf of their alleged predecessor in title was in actual possession of Lot 13, between 1974 when Jane Ruth Danielson died and 1994, when the Grant of Letters of Administration to the Estate of Jane Ruth Danielson was issued. The Defendants pleaded that Filius Ackie never exercised acts of ownership with respect to the said lands, neither has he ever

paid taxes for same, as at all material times Thomas Gellizeau was the agent for the said Katherine Ann Millar nee Danielson.

[29] This assertion cuts across the evidence given at trial by Thomas Gellizeau in many respects, which do not support the pleaded allegation that Gellizeau had acted as agent for Katherine Ann Millar nee Danielson, nor do those assertions support the position that Gellizeau had been in actual exclusive possession of Lot 13 at any material time.

[30] I agree with Learned Queens Counsel Campbell, that in law, Gellizeau could not have been agent in respect of Lot 13 for or on behalf of any of the following parties, that is-

- (a) John Gustav Danielson in his personal capacity, because Lot 13 was never vested in the name of the said John Gustav Danielson;
- (b) John Gustav Danielson as Attorney on Record for Jane Ruth Danielson because the Power of attorney would have lapsed on the death of Jane Ruth Danielson in May 1974;
- (c) Grenadines Development Limited, because Lot 13 was never transferred to that Company;
- (d) Jane Ruth Danielson, because any such agency would have lapsed on her death in May 1974;
- (e) Katherine Ann Millar nee Danielson, because she was appointed Administratrix of the Estate of Jane Ruth Danielson only on 19th January 1994, that is two years after Filius Ackie purported to transfer Lot 13 to his son, Cleveland Ackie. Counsel further contended interestingly that in any event, Katherine Ann Millar was born on 20th July 1962, and that, at all material times, made her an alien minor up to 20th July 1980.

[31] The effect of all this, as stated above is that Gellizeau's legal status could not have been that of an agent. There was no valid contract of agency. Gellizeau therefore could not have been an agent or a caretaker unless there was at all material times a principal to whom he could properly be deemed to have been answerable to as an

agent. The big question therefore is, did Gellizeau's alleged "control" of Lot 13 amount to effective physical possession and occupation of Lot 13 at all material times. In light of all that has been said above, I would answer that question with a resounding no.

[32] To my mind, as far as the estate including Lot 13 was concerned, there had been an effective discontinuance of possession, from 1974, when Jane Ruth Danielson died. The Defendants have asserted that the root of the title to Lot 13 lies with the Estate of Jane Ruth Danielson, and in doing so they have placed reliance on Gellizeau's alleged caretakership of the said Lot 13. If Gellizeau was the caretaker of Lot 13, the Defendants cannot now allege that Gellizeau was in adverse possession, and by extension the estate of Jane Ruth Danielson cannot rely on Gellizeau's alleged possession or to put it more clearly, the entitlement of the Estate of Jane Ruth Danielson to Lot 13 would have been extinguished by Gellizeau's possession.

[33] Having thus said, what is the position of Filius Ackie as regards Lot 13 based on the Evidence? Evidence was adduced by the Claimants to the effect that Filius Ackie had assumed adverse possession of Lot 13 in 1972 up until 1992. There was evidence of his business involvement with John Gustav Danielson and his direct involvement in the purchase of Lot 13 in 1969; there was evidence of his having told John Danielson of his intention to take Lot 13 for himself as he found it to be an attractive beach front parcel of land and on which he had intended to build a residence; there was also evidence of his having rented out portions of Lot 13 to peasant farmers from 1972 on his own behalf until agriculture began to decline on Union Island in the 1970's; there was also evidence of having used Lot 13 for his own cultivation and later for the rearing of his many animals during and after the decline of agriculture in Union Island; then there was also evidence given by both himself, and by his son Claudius Ackie of his having maintained Lot 13 and having used and treated it as his own land at all material times; and finally there was evidence of his having conveyed Lot 13 in 1992 to his son Cleveland, an uncontroverted assertion of ownership.

- [34] Gellizeau himself stated in his witness statement and under cross-examination that he personally drove Filius Ackie and his workers off the said land, since his return from Trinidad. There is evidence from Filius Ackie, that at some point in time, specifically from 1983 to 1986, he worked as a building contractor in Trinidad, but that he did frequently return to St. Vincent every three months during that time to tend to his business, which included maintaining his animals on Lot 13. He has denied that Gellizeau drove him and his workers off Lot 13, but interestingly this same allegation from Gellizeau amounts to a concession of the presence of Filius Ackie and his workers on Lot 13 at some point in time.
- [35] Filius Ackie also produced to the court, rent receipt stubs to prove his assertion that he rented out portions of Lot 13 to the natives of Union Island. The Defendants tried to rebut this telling evidence by stating through Gellizeau that this was rent collected by Filius Ackie on behalf of John Gustav Danielson, who had given permission to Ackie to rent out to the natives. Having analyzed the evidence of Ackie as per his possession and use of Lot 13, I am afraid I cannot tie myself to the explanation offered by Gellizeau as to his involvement with Lot 13 as against that of Filius Ackie. On a balance of probabilities I find that from as far as 1972, Filius Ackie was treating Lot 13 as his own land, and exercised acts of possession and ownership thereon, and continued to do so until he purported to convey Lot 13 to his son Cleveland in 1972, two years before the grant of Letters of Administration to the Estate of Jane Ruth Danielson.
- [36] Further, it is my view that Filius Ackie's possession of Lot 13 continuously from 1972 to 1992 extinguished the right of the Estate of Jane Ruth Danielson to Lot 13 at least by mid-1984, which is twelve clear years after Filius Ackie had first assumed adverse possession of Lot 13. The fact that Gellizeau and his solicitor, Mr. Sylvester Raymond-Cadette registered several possessory titles involving lands formally vested in the name of Jane Ruth Danielson, in the name of Grenadines Development Limited, does not make the case for the Defendants any stronger or detract from the Claimants case. Gellizeau could not on the one hand assert to this court in his evidence that he

was the caretaker of those lands including Lot 13, and then by virtue of registration of several possessory titles, declare himself the owner of those same lands. I find that Gellizeau's evidence lacks credibility.

[37] Furthermore, the evidence of Sylvester Raymond-Cadette, an Attorney-at-Law and witness for the Defendants, does not take the case for the Defendants any higher. Mr. Cadette's evidence mainly was to the effect that as attorney for Gellizeau, several parcels of lands for which Gellizeau asserts he had been appointed caretaker were statutorily declared to be the possessions of Thomas Gellizeau, including Lot 13. Mr. Cadette stated on oath that he signed these statutory declarations prepared by Gellizeau, had them registered after which Gellizeau, in his own evidence to this court, proceeded to sell off those lands to foreigners. To date \$280,000 E.C. worth of those lands have been sold as per Gellizeau's evidence.

[38] There was an area of contention between Mr. Cadette's evidence and that of Filius Ackie pertaining to when and how long Ackie had lived in Trinidad. Even if Ackie had lived longer in Trinidad as asserted by Mr. Cadette, there was no rebuttal of Ackie's assertion that he frequently visited St. Vincent to see about his properties. I believe Mr. Ackie when he so stated, and I believe that from 1972, he had been in adverse possession of Lot 13.

THE LAW

[39] I intend, in explaining the law applicable to this case, to answer Numbers two and three of the issues crucial to the determination of this case.

[40] In this claim, the Claimant claims among others, damages for trespass. From the evidence, the Defendants seem to suggest that the Claimants cannot maintain an action in trespass against them. I do not agree with this suggestion. As I find in the evidence, the Claimants having purchased Lot 13, entered into possession as successors in title to Cleveland Ackie from whom they purchased. Then there is also

evidence by way of Exhibit A.K.5, which is a survey plan GR6/27, which evidences that Claimant Hilary Bowman had commissioned survey work on Lot 13 in May 1996. Put at its highest, it is clear law that the slightest acts by the person having title to the land by his predecessors in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title, unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired – see Judgement of the Judicial Committee of the Privy Council in the Bahamas Case of OCEAN ESTATES LIMITED v NORMAN PINDER (1969) 2 W.L.R. 1359; WUTA-OFEI v DANQUAH (1961) 1 W.L.R. 1238.

[41] The Claimants have also advanced the argument that the combined effect of section 6 of the real Property Act Chapter 248 of the Revised Laws of St. Vincent and the Grenadines 1990 and sections 17(1) and 19 of the Limitation Act Chapter 90 is to empower any person who has been in adverse possession of land for more than twelve years to execute a deed to convey that land to any other person without himself being obliged by law to formally vest the land in himself. I agree entirely with that argument and go further to conclude from that argument that Filius Ackie had quite properly and effectively conveyed Lot Number 13 to his son Cleveland, by Deed of Gift Number 2081 of 1992, since the said Lot 13 had been vested in Filius Ackie by the operation of law after he had been in adverse possession for more than twelve years.

[42] As against Filius Ackie, Thomas Gellizeau claimed in his evidence that he paid land taxes for Lot 13. But he was unable to provide any proof of such payments. The law however is very clear on this issue, and to my mind the payment of land taxes is of very little consequence or relevance in the determination of title to land based on alleged adverse possession. In any event Gellizeau has not satisfied me at all that he paid any taxes for the said Lot 13 – see RICHARDSON v LAWRENCE (1966) 10 W1R 234 – a Trinidad and Tobago case on point.

[43] It would be useful to elucidate on the general principles in respect of adverse possession and in doing so I adopt the authorities stated by Learned Queens Counsel in his skeleton arguments filed in this case. Some of those principles are: -

- (a) "A title to land which is registered pursuant to the Registration of Documents Act Chapter 93 of the Revised Laws of St. Vincent and the Grenadines 1990, gives one the right to possession, but whether that right can be enforced must depend on whether or not someone is in possession of the land and has been there sufficiently long to bar the claims of a person with title."
- (b) "The limitation Act and the authorities make it clear that once the right of entry had accrued more than twelve years before action is brought, co-tenants out of possession of land are barred and their title is extinguished by other co-tenants in possession, whatever the nature of the latter co-tenants' possession."
- (c) "Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner."

[44] And in this, legal possession requires: -

- (a) A sufficient degree of physical custody and control or factual possession and
- (b) An intention to exercise such custody and control on one's own behalf and for one's own benefit or intention to possess – and speaking of factual possession, this turns on the circumstances of each case, but generally such possession is grounded where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it, and nobody else had done so.

[45] I therefore hold from the above that Cleveland Ackie's Deed of Gift Number 2081 of 1992 has priority over the second and third Defendants Deed of Conveyance Number 1006 of 1995 by the operation of the combined effect of sections 5(1) and 5(3) of the Registration of Documents Act, Chapter 93 of the Revised Laws of St. Vincent and the Grenadines 1990. Section 5(1) states –

- (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, encumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate” and section 5(3) states – “The registration of documents required to be registered under this Act shall be deemed due notice of their contents to all persons whomsoever claiming any estate or interest in, or encumbrances on, any real estate comprised in, connected with or affected by the document registered.”

[46] The answer to issue number two which is crucial to the determination of this case is therefore that both Filius Ackie and his son Cleveland had a proper root of title to the said Lot 13 and therefore the sale of that Lot to the Claimants was valid; and to issue Number three, it is clear that the purported transfer to the second and third Defendants by Katherine Ann Millar nee Danielson by virtue of Deed Number 1006 of 1995 was invalid and ineffective in law to convey the lands described therein.

[47] I also find that Filius Ackie’s adverse possession commenced in 1972 when he took possession for himself of Lot 13 and rented out portions to peasant farmers for his own benefit, this being uncontroverted evidence which I fully accept; and not in 1974 when Jane Ruth Danielson died.

CONCLUSION

[48] On a balance of probabilities, I believe and accept the case for the Claimants. The Claimants acquired title to Lot 13 as bonafide purchasers, despite evidence to the contrary as per Mr. Sylvester Raymond-Cadette, to the effect, that he warned Claimant Hilary Bowman against purchasing Lot 13. It is my view that the person on whose behalf Mr. Cadette warned Claimant Hilary Bowman, himself had no proper title to the land in issue.

[49] It is my view that the Claimants have discharged the burden of proving their case, on a balance of probabilities and on the issues as pleaded. I therefore enter judgement in favour of the Claimants, whilst dismissing the Defendants defence and counterclaim and order as follows: -

- (1) This Court declares that the Defendants are not entitled to interfere with or go onto, or remain on, or trespass on, or fence, or enclose, or carry out, or attempt to carry out any acts of possession or ownership on to, or in respect of the Claimants lands at Richmond, Union Island as described in the schedules to the Deeds of Conveyance Numbers 2636 of 1995, 4326 of 1996, 3948 of 1995 2584 of 1996 and 1744 of 1996;
- (2) This Court orders that the Registration of Deed of Conveyance Number 1006 of 1995 dated 24th April 1994 be cancelled.
- (3) An injunction is hereby granted to restrain the Defendants perpetually, whether by themselves or by their servants or agents, and whether acting as principal or agent or howsoever otherwise, from doing any or all of the acts, deeds and things described earlier in this judgement;
- (4) The Defendants will also pay the Claimants costs certified fit for two counsels in the sum of \$20,000.

The Claimants had also claimed damages for trespass. Apart from the general evidence led that the Defendants had dug holes and commenced fencing of the said Lot 13, no other evidence was led to give the court a clear insight into the real nature and extent of the trespass in monetary terms. Besides the Claimants had sought and obtained from the High Court an interlocutory injunction restraining the Defendants from further interference with Lot 13 until the final determination of the matter. I therefore have nothing before me to make a safe and appropriate assessment of Damages for Trespass. I therefore make no order under that head.

FREDERICK V. BRUCE-LYLE
High Court Judge