



[2019] JMSC. Civ 149

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015HCV05794

BETWEEN	VIOLET ALLISON	CLAIMANT
	(Personal Representative of the estate of William Alexander Henry and sole surviving executor under the will of George Henry)	
AND	JOSEPHINE LAWRENCE-JOHNSON	1ST DEFENDANT
AND	PATRICK COUSINS	2ND DEFENDANT

IN OPEN COURT

Lord Anthony Gifford, Q.C., and Mrs. Emily Shields instructed by Gifford, Thompson and Shields for the Claimant

Mr. Garth McBean, Q.C., and Mrs. Verleta Green instructed by Verleta V. Green for the Defendants

Heard: May 21, 22 & 24, July 3, 2018 and July 23, 2019

Land Dispute – Three properties merged into one – Land brought under the Registration of Titles Act – Whether title obtained by fraud – whether claim is statute barred – Adverse Possession – Limitation of Actions Act – Registration of Titles Act (RTA), ss. 42, 68, 70, 71, 153, 158, 161 & 168

LINDO, J

The Parties

- [1] The Claimant, Mrs. Violet Allison, who resides in England, is now over eighty-six years old. She is the duly appointed Personal Representative in the estate of her father William Alexander Henry who died on January 20, 1973. On December 1, 2015 she obtained a grant of Letters of Administration with will annexed *de bonis non* in his estate. She is also the surviving executrix of the estate of her brother, George Henry, who died on December 25, 1994. She obtained a grant of Probate in his estate on February 16, 1996 along with her brother Horace Henry, the other named executor. Horace Henry died in June, 2004. William and George Henry were owners of separate but adjoining properties situate at Three Chains in the parish of Manchester and Mrs Allison was one of the beneficiaries named in the last will and testament of both William and George Henry.
- [2] The 1st Defendant, Josephine Lawrence Johnson and her son Patrick Cousins, the 2nd named Defendant, are the registered proprietors of property comprised in Certificate of Title registered at Volume 1427 Folio 100 of the Register Book of Titles, the subject of this claim. This registration was effected on December 30, 2008.

Background to Claim

- [3] The three adjoining parcels of land at Three Chains in the parish of Manchester had valuation numbers 144 05 008 001, 144 05 008 002 and 144 05 007 001, respectively. By a series of transactions with the National Land Agency and the Office of the Registrar of Titles, these parcels of land were merged into one holding, with valuation number 144 05 008 044. This property is the land now described as 'land part of Shooters Hill in the parish of Manchester containing by survey eight hectares and eight thousand ten thousandths of a hectare' and comprised in the Certificate of Title registered at Volume 1427 Folio 100 of the Register Book of Titles.
- [4] On December 2, 2015, the Claimant filed a "Without Notice Application for Court orders" in which she sought an order directing the Registrar of Titles to disclose

documents used to bring the title into being, and an injunction barring any action on the title until the substantive application regarding the title was heard.

- [5] The application was heard on December 17, 2015, and the court ordered the Registrar of Titles to “disclose all documents in the custody or possession of the Titles Office which were used to bring title registered in the names of the 1st and 2nd Respondents at Volume 1427 Folio 100 of the Register Book of Titles...” The Respondents were restrained from taking any action on the title for a period of twenty-eight days. The *inter partes* hearing was set for January 13, 2016, at which time the order was extended to June 23, 2016, and orders were made for the Claim Form and Particulars of Claim to be filed and served. The injunction, restraining any action on the said title, was further extended until the determination of the matter.

The Claim

- [6] On February 5, 2016, the Claimant, in her capacity as Personal Representative in the estates of her father and brother, filed an “Amended” Claim Form and an “Amended” Particulars of Claim in which she claims, *inter alia*, that the 1st Defendant, Josephine Lawrence Johnson has caused the names of William Henry and Violet Allison to be removed from the Valuation Rolls and has consolidated the three plots of land into one which has been placed in her name and given a new valuation number 144 05 008 044. She also claims that the 1st and 2nd Defendants applied for first registration of the unregistered lots and have caused their names to be registered as joint tenants of the properly comprised in Certificate of Title registered at Volume 1427 Folio 100 of the Register Book of Titles.
- [7] In the Particulars of Claim, she sets out quite extensively, specific particulars of fraud alleged against the Defendants and facts contained in the documents obtained by virtue of the court order and further claims that as a result of fraud, the estate and beneficiaries under her father’s and brother’s estates have

suffered loss and have been deprived of their legacies in that, “...*they have been kept out of possession of their land since 2008 when title to the land was obtained by the 1st and 2nd Defendants...*”.

[8] She therefore seeks the following orders:

- “1. A cancellation of Duplicate certificate of Title to land registered at Volume 1427 Folio 100 issued in the names of the 1st and 2nd defendants – Josephine Lawrence- Johnson (sic);
2. An issuance of a new duplicate Certificate of Title in the name of the Claimant – Violet Allison
3. Damages;
4. Costs;
5. Such further and other relief as the Honourable Court deems fit.”

The Defence and Counterclaim

[9] By their Defence filed on June 21, 2016, the Defendants deny the claim and state *inter alia*, that:

“...all actions taken ...were in pursuit of an application for first registration of the disputed property. The abovementioned application was initiated by Miss Helen Williams, deceased. All actions taken by the 1st Defendant were therefore made under the honest belief, that Miss Helen Williams, deceased, had purchased the said property and was at all material times the lawful owner..

Neither the 1st nor the 2nd Defendants were aware of the documents prepared and/or submitted by Miss Helen Williams, deceased, to the requisite agencies in pursuit of the application for a registered certificate of title...”

[10] They counterclaim for the following:

“...a possessory title to the disputed property, pursuant to section 3 of the Limitations of Actions Act, by virtue of the open, quiet and undisturbed possession of the disputed property for over 34 years, collectively by the 1st Defendant and her predecessor Miss Helen Williams, deceased...”

A declaration that the 1st and 2nd Defendants had acquired title to the disputed property by way of adverse possession.

Costs...”

- [11] The Defendants further state that, in any event, the Claimant’s claim is statute barred “pursuant to section 168 of the **Registration of Titles Act** and by extension the **Limitations of Actions Act** and the **Statute Jacobe** 1 C. 16.”
- [12] The Claimant, on July 7, 2016, filed a Reply and Defence to Counterclaim in which she joins issue with the Defendants and states, *inter alia*, that the limitation period referred to in section 168 of the **RTA** does not apply to her claim. She avers further that the fraud being alleged, was first discovered in the year 2013, and that the Defendants “*have not set out any admissible basis on which their counterclaim is made*”.

The Trial

- [13] The parties provided written skeleton submissions and at the commencement of the trial, Lord Gifford, QC., supplemented the Claimant’s submissions with an extensive overview of the Claimant’s case and the Defendants’ statements of case.
- [14] The Claimant gave evidence on her own behalf and called one witness, Courtney Henry, the Manager/Deputy Commissioner of Land Valuation for the South Region of the National Land Agency. A Witness Summons was issued on May 9, 2018 to secure his attendance at the trial.
- [15] The 1st Defendant gave evidence, and one witness, Christopher Hewitt, was called in support of the Defendants’ case.
- [16] The following were agreed and admitted in evidence:

Exhibit 1 Pages 1 – 73 of Core Bundle (1)

Exhibit 2 Pages 74 – 86 of Core Bundle (1)

Exhibit 3 Letters dated June 15 and August 9, 2005 from attorney at law, Lindel U. Smith to Desmond Rowe, Commissioned Land Surveyor.

Exhibit 4. Copies of Government of Jamaica Official Receipts, all dated October 6, 2006, issued by the Spanish Town Collectorate, as follows:

- i. No. 0625400, (0625399) showing payment of \$61,800.50 (taxes and penalty from 2003 to 2007) by Josephine Lawrence Johnson in respect of 49953 sq. meters in the name William Henry of Hanbury.... Tax payer ID 144-05-007-001-8
- ii. No. 0625398 (0625397) showing payment of \$299,689.00 (taxes and penalty from 2002 to 2007) by Josephine Lawrence Johnson in respect of 26406 sq. meters in the name of Josephine Lawrence Johnson of Three Chains...Tax payer ID 144-05-008-001-0
- iii. No. 0625399 (0625398) showing payment of \$48,169.25 (taxes and penalty for 2003 to 2007) by Josephine Lawrence Johnson in respect of 12039 sq. meters in the name of William Henry of Three Chains...Tax payer ID 144-05-008-002 and
- iv. Copies of Certificates of Payment of Taxes showing taxes paid to March 31, 2007 in respect of properties listed at i to iii. Above and indicating the person appearing on the Roll as Josephine Lawrence Johnson

Exhibit 5 Pages 1 - 36 of Bundle of Documents received from the Titles Office by the Defendants

The Claimant's Case

[17] The witness statement of Violet Allison, filed on January 31, 2018, was admitted as her evidence in chief after she was sworn and it was identified by her. Her evidence is that properties, owned by her brother George, were transferred to her and Horace as executors, and, after the death of Horace, she applied to the National Land Agency (NLA) for a change of possession of land. She states that her name and that of her father, William, were listed "on at least three valuation rolls for unregistered land in Three Chains, Mandeville – totalling some twenty-

one (21) acres...". She adds that she paid property taxes on the lands and sometime in or around 2012, when she went to pay the taxes she noted that the name of owner and person in occupation on the Valuation Roll of one of the parcels owned by her father had been changed to Josephine Lawrence Johnson and as a result she retained an attorney.

- [18]** Her evidence further is that the transactions resulting in the change of name, from her father's and her name, to the 1st Defendant, the merger of the three properties into one, and the application for first registration of the land in the names of the 1st and 2nd Defendants were done by fraud. She adds that the signatures which the 1st Defendant represents in the documents to NLA to be William Henry's "is a false and fraudulent signature. William Henry died in 1973...Each and every signature which the 1st Defendant represents in the documents submitted to the NLA to be mine is a false and fraudulent signature..."
- [19]** She states further that she did not issue a receipt in the sum of \$19,500.00, never sold any of her father's land and that no one by the name of Eleen Williams ever owned or occupied any of her father's land. In amplification, she said that in 2006 she "realized something was not quite right" in relation to the land for which her father's name was on the tax roll.
- [20]** When cross examined by Mr McBean, QC., Mrs Allison said prior to 2006 she paid taxes several times, and that every year between 2006 and 2012 she came back to Jamaica and that she checked and she spoke to an attendant or clerk at the Tax Office in Mandeville.
- [21]** She disagreed that between 2002 and 2007, property tax for Three Chains property was paid by Josephine Lawrence Johnson and stated that she visited the property at Royal Flat, there were no crops growing, she saw 'one or two persons' on the land and on one occasion, on one of the properties, she observed a bulldozer working on newly cut road which was being widened. She said she could not recall the year, but it was after her brother died in 2004, and

she indicated that she “ordered the people off [her] property”. She added that she doesn’t know if the road is still there, and that at the time of her visit, the house she saw was a little shack, made of straw, and the nearest she came to it was about a chain.

- [22]** She admitted that she did not know ‘for sure’ whether the 1st Defendant signed any of the documents, forged any signature, or in collusion with any other, namely Eleen Williams, submitted receipts purportedly signed by William Henry more than eight years after his death, and neither did she know if the 1st Defendant fraudulently colluded with Eleen Williams to represent to the NLA that Eleen Williams bought land from William Henry for \$250,000.00 in 1981, or that the Defendants had anything to do with the documents she obtained from NLA or whether they had anything to do with the Indenture dated 1981, applications, or documents marked “Notice of Change of Possession”.
- [23]** She said she could not remember if she visited the property in 2010 and that she never met “Ellen or Elen or Helen” but met Bob, and would see him if she visited the property and that it could be more than “5, 6 or 7 times” that she saw him and she sometimes spoke to him. She said she would drive on the ‘Alcan Jamaica road’ to the property, would not come out of the vehicle, but stayed on the road and looked and she could not see all of the property. She said she had never seen livestock or crops on the property and when pressed she agreed that during the period she was visiting there were orange and ortanique trees. She also said there was always a road there and on the last visit in 2016, the road was still there. She stated that when she went to pay property taxes in 2006 “there was no tax paper, no paper to pay the taxes”, she discovered that her father’s name was not on the papers and she did not ask why.
- [24]** She said during the time she saw Bob, she did not write to him or to anyone about being on the land, as she had no reason to. She also stated that she visited all of the properties, and when she visited after 2004, she could identify the property belonging to William and George and that the shack was on her

father's land. She said she had never seen a two bedroom dwelling house made of wood and concrete, with a separate kitchen and toilet nor signs of farming on the land.

- [25]** Courtney Henry's evidence is that he oversees work in the parishes of Manchester, Clarendon and St. Elizabeth, "involving valuation, amendment of valuation roll..." and he keeps records. He identified a number of the exhibits, including the documents, which he said had to do with four valuation numbers. He stated that three numbers "were actually retired" to merge three parcels of land and create one valuation number, and that 'someone' took ownership of three properties which were contiguous "and they ask us to merge them as one"
- [26]** He explained the process by which the Valuation Roll would be amended, indicating that documents called 'Transfer Forms' and 'Change of Possession of Ownership' which are completed by the Transferor and Transferee, would be submitted to his office along with proof of sale or transfer, and checks are made and the roll amended with the new information.
- [27]** In relation to documents comprising Exhibit 1, he indicated that, (page 25 and 26) Josephine Lawrence Johnson would have written to the Collector of Taxes saying "she has now come into possession of this property, and would have given the particulars of the person who sold her the property". He pointed out that the document showed the transferor as 'Violet Allison', gives the sale price as \$19,500.00. He stated that Josephine Lawrence Johnson would have signed before a Justice of the Peace.
- [28]** With reference to the receipt dated 6th November 1982, (page 33), he explained that it is 'probably' one proof required that the property was sold by Violet Allison to Josephine Lawrence Johnson, as it is a receipt for payment for land and it also indicates the valuation number of the property being sold. "Notice of Amendment of Valuation Roll" (page 34), he said was a document prepared after the process of transfer, and would be sent to the transferor and a copy to the transferee. He

added that the transfer document is relied on to indicate when the sale takes place and the date of possession of the property, to determine the effective date of valuation or when they should start paying taxes.

[29] Mr Henry said his signature appeared on the Certificate of Valuation (Exhibit 2, Page 84) and that “someone would have requested a valuation of the property” and “all valuations come to me to sign off on”. He indicated that before signing it, he would go and look at the property and that he went and saw fully grown trees there.

[30] Under cross examination, he stated that he did not know why the valuation was done in July 2007, and repeated that it related to a “fourth property”, which is a merger of the three properties, and was being done as someone had requested a valuation and that was “the norm”. When asked if a shack could have been on the property and he did not observe it when he went, he said it is a big property and he did not walk the entire property.

The Defendants’ Case

[31] The witness statement of the 1st Defendant dated March 5, 2018, was admitted as her examination in chief after she was sworn and it was identified by her. Her evidence is that in August 2006 she returned to Jamaica to bury her father and on September 2, 2006, she met her mother Helen Williams after not having seen her since about 1972 or 73. She states that she visited her mother on September 5, 2006, and saw her “living on land on which she had a large farm...”, and the house was “a two room dwelling of mixed concrete and board”. She testifies that on that visit she met her mother’s common law husband, Robert Stephenson, also known as “Bob”, and on about the weekend, her mother showed her receipts signed by Horace Henry and documents which relate to the purchase of the property. Her evidence also is that her mother gave her some documents “which included Tax Payment Advices” and that the name Horace Henry was at the bottom of all the receipts she saw. She adds that based on the “Tax papers”

she received from Miss Ellen, she carried out investigations at the Tax Office and after some of the arrears were cancelled, she paid the sum of \$409,658.75.

- [32]** She states further that she went to the office of Lindel Smith, attorney at law, and that she paid the final fees for the survey of the land and completed “the Application to bring land under the Registration of Titles Act and left it with Miss Ellen...under the honest belief that Miss Helen Williams had purchased the land from Horace Henry and that she was the lawful owner and had been in possession as she maintained from 1981/1982”. She adds that she “sent moneys to Miss Ellen Williams to start building on the land”, that “Miss Ellen turned over the house to [her] and [her] son...by way of an Indenture dated the 21st day of September 2006” and she demolished the house on the land in 2010. She denies having any knowledge of Indenture dated March 15, 1981, states that she was present “on or about 1st February, 2007” when a woman came and demanded payment for the land and that she offered and paid over the sum of \$19,500.00, but did not get a receipt.
- [33]** With regard to documents relating to the Application to bring land under the RTA which she states she obtained from the Office of Titles, she states that “the date of March 15, 1981 on the Indenture is incorrect...transaction took place in September 2006...The year 1980 in...the Statutory declaration of Enos Blair, Statutory declaration of Josephine Lawrence Johnson and Patrick Cousins is incorrect... The Statutory declaration of Robertson (sic) is correct”. She denies having “any knowledge” or “any personal knowledge” of any documents concerning valuation numbered 144 05 008 001, 144 05 008 002 and 144 05 007 001, or submitting them to the NLA and states that when she discovered that the Titles Office needed a new valuation, she attended the Land Valuation Office in Kingston and she later collected the Certificate of Valuation at the Mandeville Office.
- [34]** When cross examined by Lord Gifford, QC., she indicated that she lived in the United Kingdom and in 2006 was living there “going 40 years” and when she had

last seen her mother she was about 12 years old and had had no contact with her. She stated further that she believes she returned to England in January 2007, came back to Jamaica in the same year, also came in 2009, and went back to England and came permanently in 2010. She said that her address is 27 Hillary Avenue and that the Main Street, Mandeville address was a rented accommodation by her mother.

[35] She indicated that her mother did not apply for a registered title but she did, because her mother turned over the land to her in 2006. She admitted that when she originally submitted the document it had 'Three Chains' which was changed to 'Shooters Hill', and that she had declared the value as \$1.5m and the Titles Office said that was too low. She agreed that the total value stated in respect of the three parcels of land for which she was trying to get title was \$14.3m and said, "I wasn't checking the value, sir". She agreed that her signature appeared on the Application to bring the land under the Registration of Titles Act (Exhibit 5, pages 17 and 18) but indicated that "it should say 2007". She also stated that she did not instruct anyone to prepare the document for her and that she had nothing to do with it, but that "it was presented to me and I sign". She also said she did not take the documents to the Titles Office.

[36] She agreed the signature on declaration (Exhibit 5, Page 19 and 20) was hers, and that she made it before a JP, January, 2007, but indicated that the address, '51 Main Street', "may be an error in typing". She added that she could not say she knew the land for over 30 years, but that it is correct that the land was in the possession of 'Eleen Williams', who was reaping rents and profits and paying taxes, "as that is what she told us". She stated it is not true that since 1980 she has enjoyed sole, quiet, undisturbed possession and said that she signed to it as "...was distressed, had surgery...didn't go through the whole procedure as [she] should...". She agreed that her signature appeared where the document had "Three Chains" originally typed and corrected to read "Shooters Hill".

- [37]** She denied that the signature on Notice of Change of Possession of land dated September 10, 2006 (Exhibit 1, page 26) was hers, and when shown Exhibit 1, page 25) she admitted that around September 10, 2006, she was visiting her mother and that she went to a Justice of the Peace and admitted to being in Mandeville on September 15, 2006 and that she went with her mother who took her to sign an Indenture as her mother decided to transfer the land to her. She stated that she was to help her mother “sort out some land that she bought”, and it was all decided on her first visit to her mother in September 2006 and that her mother told her it was “plenty land”. She also stated that she had never heard the name ‘Violet Allison’ or the name ‘William Henry’, before.
- [38]** With reference to Exhibit 1 (page 53), Indenture dated 21/9 2006, she admitted to going to the Justice of the Peace on September 21, 2006, denied knowing the document, denied it was lodged by her and said “never seen this document before, sir”. When shown Exhibit 2, (page 74), Indenture dated March 15, 1981, (stamped on January 29, 2007) she denied going with Ms Helen to the Justice of the Peace named in the document, and said that Ms Helen kept the documents, and she did not know about documents dated 1981, as she met Ms Helen in 2006. She denied taking full part in preparing and lodging documents. She however admitted to signing an Indenture in 2006 along with her mother.
- [39]** Christopher Hewitt’s evidence in chief is contained in his witness statement filed on March 1, 2018. His evidence is that “Ellen Williams” was his aunt and he first met her in 1990. He says he does not know the name of the place she lived, but that it was located “off the highway on the first left turn on the highway to Mandeville”. He adds that on his first visit he met a man named Bob and he saw a two bedroom, board house on concrete foundation with separate kitchen and toilet, saw crops growing and also saw pigs in the yard, as well as chicken coops with layers, and common fowls and that there was a wall consisting of packed stones. He states that he first met his cousin Josephine “after she returned from England”.

[40] In cross examination, he said he did not know the size of the property as he “never went over the land” and that the first time he met the 1st Defendant, was “when my auntie move off the land”. He said he could not remember the date or the year and neither could he remember when he last visited the house. When asked if he knew Patrick Cousins, the 2nd Defendant, he replied, “this lady nephew”, indicating the 1st Defendant. He then said he knew him, and said he did not know Enos Blair.

The Submissions

[41] At the close of the evidence on May 24, 2018, the court ordered the parties to provide written submissions. These were filed on June 7 and 21, 2018, respectively. On July 3, 2018, both Queen’s Counsel made oral submissions to the court outlining the nature of the case presented by the parties and the issues which they find the court had to address. I will not rehearse the submissions but will make reference to them as I see it necessary to explain the reasons for the decision I have arrived at.

The Issues

[42] The issues which I find arise for determination and as referred to by Counsel for the parties, are:

1. Whether the claim for a cancellation of the Certificate of Title registered at Volume 1427 Folio 100 is statute barred;
2. Whether the Defendants procured the said Duplicate Certificate of Title for the property by fraud; and
3. Whether the Defendants have acquired title to the disputed property by way of adverse possession.

Whether the claim for cancellation of the title is statute barred

[43] The instant claim is in effect a challenge to the title of the Defendants who are registered as proprietors. It is the Defendants’ view that the entire claim is statute

barred “pursuant to section 168 of **RTA** and by extension the **Limitations of Actions Act (LAA)** and Section III of the **Statute Jacob** Ch. 16”.

- [44] The general rule is that a claim such as this, is subject to a limitation period of six years after the commission of the alleged fraud. (See **Muir v Morris** [1979] 16 JLR 398). Time begins to run when the cause of action accrued. The expiry of the limitation period would therefore provide the Defendants with a complete defence to the claim. (See **Donovan v Gwentoy** [1990] 1 WLR 472).
- [45] By virtue of **section 168 of the RTA**, the claim must be filed within the period of six years from the date of deprivation of the land. The effect of the **Statute Jacob 1** Ch. 16, is that all actions, including actions for fraud, must be filed within six years after the cause of action arose. **Section 27 of the Limitation of Actions Act (LAA)** requires that there be reasonable diligence, by the person claiming extension of the limitation period under that section, in taking steps to discover the alleged fraud.
- [46] The limitation defence having been raised on the Defendants’ case, the burden rests on the Claimant to prove that her claim was filed within the time stipulated by law (See **London Congregational Union Inc. v Harris and Harris (a firm)** [1988] 1 All ER 15)
- [47] The Claimant claims that she “had concerns from 2006 when [she] went to pay the taxes” but denied, in cross examination, that the alleged fraud was discovered in 2006. She stated that it was in or around 2012, when the application was being made for her to be the personal representative of her father’s estate.
- [48] Counsel for the Defendants submitted that section 27 of the LAA, which allows for the limitation period to begin running as at the date of the discovery of the alleged wrong, rather than the date the cause of action arose, would not avail the Claimant due to her lack of “reasonable diligence”.

[49] It seems to me, that while the Claimant may be said to have been put on notice in or around 2006 and with reasonable diligence should have discovered the alleged fraud by 2008, when the title with the name of the Defendants was issued, steps taken by her over the years show reasonable diligence on her part. I bear in mind the fact that she is elderly, resides overseas and I believe that she made enquiries at the Tax Office in Mandeville each time she came to Jamaica and sought the advice of attorneys at law. It was in 2015 that she sought an order from the court for disclosure of the documents used to bring the property under the Registration of Titles Act. This application to the court could only have been made in her capacity as Personal Representative of the estate of her deceased father, and the evidence discloses that it was December 1, 2015, that she obtained a grant of administration with will annexed *de bonis non* in his estate and immediately thereafter, on December 2, 2015, she made the application for disclosure of the documents.

[50] I am of the view that **Section 168 of the RTA** does not support the limitation defence sought to be raised by the Defendants, as there is no evidence from which I can find that the Claimant has been deprived of the land.

[51] In **Leroy McGregor v Verda Francis** [2013] JMSC Civ. 172, Simmons, J. examined the effect of Section 168, and said:

*“[19] The question arises as to what is meant by the word “deprived” in the section. The learned authors of **Baalman, The Torrens System in New South Wales**, 2nd edition at page 405 opined as follows:*

“The word ‘deprived’ in s. 126 means much more than ‘excluded from possession’. It means irrevocably deprived; a deprivation which could be brought about only by force of some paramount statute. That deprivation is brought about by the indefeasibility of title conferred by the Torrens system. For example, the common law owner may have his title defeated by a primary application made by a person with an inferior title and is deprived of his land at the moment when a certificate of title issues to a bona fide purchaser; thereafter that certificate of title must not be disturbed. But there is no deprivation so long as the certificate of title remains in the name of a person from whom the land can be recovered qua land by proceedings for possession or ejectment as permitted by s.124 or by other appropriate remedy.”

[20] Sections 126 and 124 to which the authors referred are similar to sections 162 and 161 of the Act respectively...

[52] While the Claimant may not have been in actual possession of the property, it cannot be said that she has been “irrevocably” deprived of it. The evidence shows that in her capacity as Personal Representative of the estate of her deceased father and brother, she has paid taxes in relation to the property and has therefore been exercising rights over it. Further, if the person in possession of the property has no lawful title, the Claimant, the person with a legitimate right to the property is not deemed to be deprived of it.

[53] The property now remains in the possession of the Defendants, having been so registered since 2008 and I bear in mind that they have not been so registered as being “bona fide purchasers for value ...” but by their application to bring the land under the Act, which has been brought into question by the Claimant.

[54] I bear in mind also that it is the evidence of Mr Courtney Henry that a complaint was made by Violet Allison and he took actions to investigate the claim that the land was transferred, and having completed his investigations, he realised that the three parcels of land were transferred and there were some discrepancies with the transfers. He further said “we could’ve sought to reverse the actions of those discrepancies...action would have been to roll back...but because the title was issued, it couldn’t have been done...”

[55] Additionally, as submitted by Counsel for the Claimant, the Claimant is not seeking damages for deprivation of land or of any estate or interest in the land and in light of the foregoing, I am of the view that the limitation period for filing the claim has not expired.

Whether the Defendants procured the Duplicate certificate by fraud

[56] The Defendants are at present the registered proprietors of the land in question and as such, they hold a title which is indefeasible, save and except in a case of

fraud. (See Section 68, 70 and 71 of the RTA). The Claimant is seeking an order that the title issued to them be cancelled as it was procured on the basis of fraud.

[57] In **Gardener & Ors v Lewis** [1998] 1 WLR 1535, the court in referring to the effect of Sections 68, 70 and 71 of the RTA states:

“From these provisions it is clear that as to the legal estate the Certificate of Registration gives to the appellants an absolute title incapable of being challenged on the grounds that someone else has a title paramount to their registered title. The appellants’ legal title can only be challenged on the ground of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of ‘wrong description of parcels or boundaries’”

[58] Section 161 of the RTA also makes it clear that fraud, as used in the context of the RTA defeats the indefeasible nature of a registered proprietor’s title. It states as follows:

“No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say-

(a).....

(b).....

(c).....

(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;...”

[59] The Defendants’ title is therefore unassailable unless the Claimant can show that they were registered through fraud.

[60] The word “fraud” as used in the context of the RTA has not been defined but guidance may be found in decided cases, a number of which I have considered below, including cases cited by Counsel for the parties.

[61] In the Jamaica Court of Appeal in the case of **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley, Walters & RBTT Bank Jamaica Limited** [2010] JMCA Civ. 46, Harris JA at paragraph [52] states:

*“the true test of fraud... means actual fraud, dishonesty of some kind and not equitable or constructive fraud. The test has been laid down in **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] A.C. 101 by Salmon LJ when at page 106 he said:*

*‘Now fraud clearly implies some act of dishonesty. Lord Lindley in **Assets Co. v. Mere Roihi** (2) states that: “Fraud in these actions” (i.e. actions seeking to affect a registered title) “means actual fraud, dishonesty of some sort, not what is called constructive or equitable fraud – an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud’.*”

[62] At paragraph 60 of the said judgment, Harris JA says:

“Fraud for the purposes of sections 70 and 71 of the Act must be born out of acts which are “designed to cheat a person of a known existing right”.

[63] In **Stuart v Kingston** [1923] 32 CLR 309, Starke J, at page 359, stated that:

“No definition of fraud can be attempted, so various are its forms and methods...But we must say this: fraud will no longer be imputed to a proprietor registered under the Act unless some consciously dishonest act can be brought home to him. The imputation of fraud based upon the refinements of the doctrine of notice has gone. But the title of the person who acquires it by dishonesty, by fraud (sec 69), by acting fraudulently (sec. 187), or by being a “party to fraud” (sec. 187), in the plain ordinary and popular meaning of those words is not protected by reason of registration under the Act.”

[64] The kind of conduct that would amount to fraud, was described as “personal dishonesty”, “moral turpitude”, by Knox CJ in **Stuart v Kingston**, *supra*.

[65] The court in **John Chin v Watson’s (Off Course Betting)** [1974] 12 JLR 1431, had to deal with the nature of the evidence required to establish fraud in civil proceedings. Rowe J (as he then was) pointed out the principle as stated in **Davy v Garrett**, *supra*, and noted that although fraud can be proved from

circumstantial evidence, just as it can be proved from direct evidence, that proof must be by the clearest and most indisputable evidence.

[66] According to the learned author of **Murphy on Evidence**, 12th Ed., page 108:

“...the tribunal of fact must be able to say, on the whole of the evidence, that the case for the asserting party has been shown to be more probable than not. If the probabilities are equal, i.e. the tribunal of fact is wholly undecided, the party bearing the burden of proof will fail”

[67] Thesiger, L J. in **Davy v Garrett**. [1877] 7 Ch. D. 473 at 489 said as follows:

“In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts”.

[68] The learned Judge in the case of **Leroy McGregor v Verda Francis**, *supra*, at paragraph 37 of the judgment had this to say:

“A claimant is required to set out the facts and circumstances that are being relied on to prove that a defendant had or was motivated by a fraudulent intention...the court should not be asked to infer that intention from general allegations...”

[69] The Privy Council in **Donovan Crawford & Ors v Financial Institutions Services Limited** [2005] UKPC 40, at page 13 of the judgment noted that “It is well settled that actual fraud must be precisely alleged and strictly proved”

[70] In view of the authorities, I have examined the evidence against the background of the particulars of fraud pleaded, and based on the gravity of the issue, must now determine if the Claimant has satisfied the requirements in relation to her statements of case and has provided sufficient cogent evidence for the court to find that she has discharged her burden of proof. Ultimately, the court needs to determine whether the Claimant has proved that there was “actual dishonesty”, moral turpitude” on the part of the Defendants with the intention to deprive the owners of the property.

- [71] Mrs Allison has stated, quite extensively, the particulars of fraud she is alleging, and for the purposes of the pleadings, it is my view that she has satisfied the requirements of distinctly pleading the allegations of fraud.
- [72] I bear in mind that she has sought to utilize the provisions of section 42 of the RTA in support of her claim and has submitted to this court copies of several documents retrieved from the Office of the Registrar of Titles, by way of a court order, in seeking to support her allegation that the Defendants obtained the Certificate of Title to the disputed property by fraud. I agree with Counsel for the Claimant that these documents are admissible in every court as *prima facie* proof of their contents. (See: s. 76 of the **RTA** and s. 28 of the **Land Valuation Act**).
- [73] According to Privy Council in **Pottinger v Raffone**, [2007] UKPC 22, to show that a party was registered through fraud must in turn depend on what was told to the Registrar when the application to be registered as proprietors was made. What was told to the Registrar in the instant case is what is contained in the documentary evidence presented to the Registrar in support of the application for the 1st and 2nd Defendants to be registered as proprietor of the three parcels of land which were merged into one property.
- [74] A critical examination of the documentary evidence provides a tale of calculated steps taken to have three properties merged and then brought under the RTA as a single holding. Evidence, which I accept as true, is that the 1st Defendant affixed her signature to certain documents intending that the documents be used in the process of ultimately having her name and that of her son registered as title holders for the property which is the subject matter of this claim. It is also clear on the documentary evidence that the 2nd Defendant also affixed his signature to documents used in the process of bringing the land under the RTA.
- [75] The documents reveal that certain transactions in relation to the properties, carried out by the 1st Defendant started in about 2006, mere weeks after she claimed she was meeting up with her mother for the first time after not seeing her

for over about 40 years. The three properties having been consolidated into one, was clearly as a result of the documentation which included information that the 1st Defendant had an interest in the properties. There is evidence that the 1st Defendant attended the Land Valuation Office in relation to the valuation of the merged properties and that she collected the Certificate of Valuation at the Mandeville Office. It is also the 1st Defendant who paid property taxes and arrears for property taxes for a number of years, for the lands in question, payments being made for up to March 31, 2007, a total of \$409,658.75. I bear in mind that the payments of taxes by the 1st Defendant for the period 2002 to 2007, were all made on or about October 6, 2006 and this has not been denied.

[76] The Defendants have denied knowledge of any fraud and the 1st Defendant has sought to give an explanation as to how the property came to be registered in her name and that of the 2nd Defendant. Her claim that her mother owned the land is based wholly on what she claims to have been told to her by her mother, and on her mother's conduct in relation to the land. The 2nd Defendant has not given any evidence in the proceedings and there is no cogent evidence of any price for which the land was bought. The evidence of the Defendants that Horace Henry sold property to Miss Helen has not been substantiated.

[77] The 1st Defendant's name appears as a signatory to a number of documents admitted in evidence. In cross examination, she denied signing some of these documents, those she admitted to signing, she indicated were not signed on the dates indicated on the documents, and she insisted that her mother was dealing with the documentation and she signed. Notwithstanding her apologetic stance, indicating that she signed documents and should have read them, and did not, I did not find her evidence at all convincing.

[78] Having had the advantage of seeing and hearing the Claimant and the 1st Defendant, as well as their respective witnesses as they gave evidence and were cross examined, I found that the 1st Defendant was not forthright on certain facts which were critical to the case and her witness was of no assistance. In relation

to the veracity of the 1st Defendant and Christopher Hewitt, I find that they were both substantially discredited. On the other hand, I find the evidence of the Claimant and that of Mr Courtney Henry to be more reliable and credible.

[79] The substantial facts contained in the documentary evidence leading to the Defendants being registered as title holders have not been denied by the Defendants except that the 1st Defendant indicates that some of the documents were not signed by her, and documents said to be signed by others, she claimed could not have been so signed, as these persons were either illiterate or did not sign in the manner shown on the documents. It is my view that the Defendants and other persons have affixed their names to documents pretending that everything is in order when they know it is not so, and these are the documents used to allow the 1st and 2nd Defendants to be registered as owners of property

[80] I find that the Defendants misrepresented the true position when they sought to be registered as title holders of the property and this is evident from the documents presented to the Office of Titles. What is clear is that a number of documents were prepared, signed and submitted to the relevant agencies which acted on them.

[81] It is clear on the evidence that documents were presented in order to merge three parcels of land into one and to obtain title to the property in the names of the 1st and 2nd Defendants. Although there is no evidence to show that either the 1st or the 2nd Defendant physically took documents to the NLA or to the Titles Office, I find as a fact that the 1st Defendant went to the Tax Office and paid over sums of money for property taxes and arrears and that the 1st and 2nd Defendants signed documents for the purpose of being registered as title holders for the disputed property. The combined effect of affixing their signatures to documents, the presentation of the various documents to the respective agencies, and the 1st Defendant paying up arrears of taxes, was to ultimately have the 1st and 2nd Defendants registered as title holders to the disputed properties. The documentary evidence presented, in my view, therefore support

the allegations made by the Claimant as they provide uncontroverted evidence that action taken by the 1st Defendant, in particular, led to the desired aim of having the 1st and 2nd Defendants registered as owners of the property.

[82] In considering all the relevant facts of this case, including the gravity of the issues involved, the circumstances surrounding the preparation and lodging of documents and the inconsistencies surrounding the 1st Defendant, in particular, executing statutory declarations and other documents, I find that the evidence is of such a nature that it is reasonable to conclude that the 1st and 2nd Defendants obtained the Duplicate Certificate of Title to the property in their names, by fraudulent means, by their actions, and, or with the concurrence of others. The numerous discrepancies and inconsistencies in relation to the applications to consolidate the three parcels of land and to bring the entire property under the RTA and revelations by the 1st Defendant, on cross examination, point to a finding that documents submitted to obtain the registered title were false.

[83] Specific formalities are required to have lands brought together as one holding, as well as to have unregistered land brought under the operation of the RTA. The Claimant has shown on a balance of probabilities that the 1st Defendant by making applications, signing documents and paying up property taxes and arrears, did all this with the intention of being registered as owner of the properties along with her son. The documentary evidence in my view provide actual proof that the Defendants obtained title to the entire 8.8 hectare property by fraudulent means and therefore clearly support the allegations made by the Claimant that the Defendants acted in the manner as set out in her particulars of fraud.

[84] On the face of the documents, is seen intentional misrepresentation which includes the statement that the Defendants have been in possession of the property from 1980. There were misrepresentations which the 1st Defendant in cross examination agreed to. She agreed that, among other things, she did not know the lands before 2006 and agreed that information contained in documents

she admitted to signing, were false. The misrepresentations in my view also amounted to fraud. The Defendants are party to this fraud as they signed to declarations containing what the 1st Defendant described as “incorrect” information. The title issued in their joint names was therefore fraudulently obtained.

[85] On the whole, I find that the pleadings are consistent with the evidence presented by the Claimant and based on the totality of the evidence, it is clear that the Defendants, the 1st Defendant in particular, could not have held an honest belief that Miss Helen Williams owned the land in question. The evidence is such that it is open to the court to find that the subject property came to be registered in the names of the Defendants by fraudulent means. I therefore find that it is reasonable to conclude that the Defendants, the 1st Defendant, in particular, colluded with other persons in preparing and submitting documents, known to be false, to the various agencies with the intention of obtaining title to the property.

[86] In view of all the foregoing, I find that the Claimant has been successful in her bid to defeat the title of the 1st and 2nd Defendant. I also find that Section 158 of the RTA can “furnish the court with the necessary powers” to deliver the fruits of that victory to her. (see **Pottinger v Raffone**, *supra*)

Whether the Defendants have acquired title to the property by adverse possession

[87] The Defendants have counterclaimed that they have acquired title to the disputed property “by way of adverse possession”. This assertion is made pursuant to section 3 of the **LAA**.

[88] For a successful application to be made for title by adverse possession, it is necessary to demonstrate that there has been open, continuous and undisturbed possession of the property for the period prescribed by statute, without

acknowledging the title of the true owner. The onus of proving acquisition of title by adverse possession is on the person asserting such a possessory title.

[89] Section 3 of the LAA provides as follows:

“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same”

[90] In **Pye (Oxford) Ltd v Graham** [2003] 1 AC 419, it was made clear that mere physical possession of the land is not enough to establish a claim of adverse possession. In addition, the requisite intention to possess must be satisfied. In relation to factual possession, there should be acts of physical custody and control of the land or some degree of physical occupation.

[91] The learned author Sampson Owusu, in **Commonwealth Caribbean Land Law**, 2007, at page 283, pointed out that:

“...The circumstances should show sole and undisturbed possession, use and enjoyment deliberately and exclusively exercised...”

[92] Documents lodged in the Titles Office which led to the property being registered at Volume 1427 Folio 100 provide information that Robert Stephenson, who is said to have been the common law spouse of Ellen Williams, claims that he knew the land for more than 33 years and “when he first knew the land, it was in the possession of Ellen Williams until she sold it to the 1st Defendant on September 21, 2007”.

[93] The Defendants are contending that possession of the land was “adverse” from the time Ms Helen Williams lived on it. If they are saying Helen Williams was the true owner and they occupied or even used the land, they could not be in “adverse possession” as they would have taken possession of the land with her

permission and “under the honest belief...that Miss Helen Williams had purchased the said property and was at all material times the lawful owner”.

- [94]** There is no evidence of the 1st or 2nd Defendants having ever taken possession of the land. The requisite factual possession and intention to possess the land to the exclusion of all, including the true owner, was lacking on the part of the Defendants and even on their own case, they have shown that they were claiming adverse possession by virtue of the possession and occupation by Ms Helen Williams. The Defendants have never been in possession and there is no evidence nor have they exercised any act of ownership over the land.
- [95]** The 1st Defendant has given evidence that she only knew the land in 2006 and that she has never occupied it. The Claimant however, in her capacity as personal representative of the estates of her father and brother has shown on her evidence that she has visited the property on a number of occasions. There is evidence also which I accept as true, that the Claimant on seeing persons on the property on one of her visits, “ordered them off” the property. This would be evidence that Ms Helen would not have been in undisturbed possession as someone else was asserting title to the property.
- [96]** It was submitted on their behalf that the evidence shows sufficient acts of control and the necessary intention to possess by the Defendants, as well as their “continued possession of the possession of Ms Helen Williams”, to entitle them to title by way of adverse possession. I note however, that the evidence of Ms Helen Williams’ “possession” is hearsay and there was no other evidence from which I could make such a finding.
- [97]** While I appreciate that there are inconsistencies on the cases of the parties, I find the evidence that Ms Helen purchased the land to be lacking in credibility as I accept the documentary evidence that William Henry died in 1973 and therefore could not have sold any portion of the land to her and I reject the 1st Defendant’s evidence that her mother ‘said’ she bought the land from Horace Henry.

- [98] I note that a distinguishing feature of this case as against authorities examined, is that the properties in this case were separate holdings and had not yet been brought under the operation of the RTA when Eleen Williams was said to have been in occupation.
- [99] Adverse possession could only properly arise where there are acts by the Defendants inconsistent with the enjoyment of the land by the person entitled to it and the Defendants have not provided any evidence from which I can find on a balance of probabilities that this is so. (see **West Bank Estate Ltd. v Arthur** [1966] 3 WLR 150)

Conclusion

- [100] The Claimant has shown on a balance of probabilities that prior to the time the properties were brought under the RTA, there were three separate properties vested in William Henry and George Henry who had an existing rights to the properties. This would have been known to the 1st Defendant at least at the time of paying the property taxes and arrears, as the valuation roll in respect of two of the properties had the name of the deceased, William Henry, as owner.
- [101] It has also been shown by compelling documentary evidence on which the court has placed reliance, that certain assertions made by the 1st Defendant that she had nothing to do with documents submitted for the purpose of having herself and the 2nd Defendant noted on a title as the registered proprietors of the property, are false. I find that documents presented to the National Land Agency and the Office of the Registrar of Titles were so presented with the intention of having the properties ultimately registered in the names of the Defendants and I accept as true the evidence that the Defendants, and the 1st Defendant in particular, actively participated in signing documents intending to achieve that end.
- [102] I find that the Claimant has shown on a balance of probabilities that the application for the consolidation of the three properties into one and the

application for the registration of the property, were done on the bases of false information and that the various documents were so presented with the full knowledge and concurrence of the Defendants for the purpose of ultimately having them registered as joint tenants of the disputed property. As such, I find that there is sufficient evidentiary material from which I can find, on a balance of probabilities, that the registration of the Defendants as proprietors of the property in question was secured by the acts and or conduct of the Defendants and with the collusion of other persons which amounted to fraud. Clear evidence that the title was obtained by fraudulent means is the inconsistencies and attempts at explanation by the 1st Defendant that she did not “read as she should” or there was “error in typing”.

- [103]** The documents presented to the office of the Registrar of Titles were so presented with the full knowledge and concurrence of the 1st Defendant who was instrumental in organizing and preparing documents intending to and which in fact did effect a transfer of the property to her and the 2nd Defendant.
- [104]** The unchallenged evidence of Mr Henry that application was made for a valuation of the property and the documentary evidence showing that the application was made by Josephine Lawrence Johnson who was said to be the “owner and person in possession” and the fact that the application was stated to be for the purpose of getting a registered title is further compelling evidence of the 1st Defendant’s involvement in the acts which led to the lands being brought under the RTA and title issued in the joint names of the 1st and 2nd Defendants.
- [105]** In view of all the foregoing I am led to find that the evidence presented in this matter shows on a balance of probabilities, that there was actual dishonesty on the part of the Defendants and persons acting in collusion with them so that they could be registered as title holders to the property.
- [106]** There will therefore be judgment for the Claimant on the claim and on the counterclaim.

[107] The Claimant has not provided any evidence on which the court can determine whether there should be an award of damages and as such no award of damages will be made.

Disposition

[108] It is hereby ordered as follows:

1. The Defendants are to deliver up Duplicate Certificate of Title registered at Volume 1427 Folio 100 of the Register Book of Titles to the Registrar of the Supreme Court on or before July 31, 2019, and the Registrar of the Supreme Court shall transmit same to the Registrar of Titles within ten days of receipt
2. The Duplicate Certificate of Title along with the original title registered at Volume 1427 Folio 100 of the Register Book of Titles in the names of the Defendants is to be cancelled by the Registrar of Titles as same was obtained by fraud.
3. If the Defendants fail, neglect or refuse to deliver up the said Duplicate Certificate of Title to the Registrar within the time specified, the Registrar of the Supreme Court shall forthwith inform the Registrar of Titles, in writing, and the Registrar of Titles shall forthwith cancel the said certificate of Title
4. The Claimant is at liberty to prepare and submit requisite documents to have the three properties (dealt with in keeping with her position as the Personal Representative and beneficiary of the estate of the deceased William Henry and George Henry.

The Claimant is also entitled to costs which are to be taxed if not agreed.