



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2011 HCV 06340**

BETWEEN	IRIS ANDERSON	CLAIMANT
AND	THOMAS ANDERSON	1ST DEFENDANT
AND	THE REGISTRAR OF TITLES	2ND DEFENDANT

Limitation of Actions – Whether claim to Possessory Title defeated by First Registration – Whether Registered Title obtained by Fraud – Whether failure to make full disclosure is evidence of Fraud.

Mr. Carl McDonald and Miss Tameka Jordan instructed by McDonald Jordan & Co. for the Claimant

Mr. Andrew Irving and Miss Yvonne Ridguard for the 1st Defendant

Miss Deidre Pinnock for the 2nd Defendant instructed by the Director of State Proceedings.

**HEARD: 13th June 2013, 14th June 2013, 17th June 2013, 5th July 2013,
20th September 2013 & 9th May, 2014**

CORAM: THE HON. MR. JUSTICE DAVID BATTS

[1] Upon commencement of this trial, the Attorneys for the 2nd Defendant Registrar of Titles, indicated that there was before the Court an application to strike out the Claim. I asked Counsel to tell me why should the Court delay the trial to hear such an application at this late stage. Having heard submissions, I decided not to entertain the application. In my view such an application ought properly to be made at Case Management or Pre-Trial Review. When regard is had to the limited time reserved for the trial and the number of witnesses involved, I exercised my discretion and decided not to delay commencement of the trial by entertaining the application.

[2] Ms. Tameka Jordan for the Claimant asked that her Skeleton Submission (Bundle #2, page 1) stand as her opening submission. She also indicated that the following were to be admitted as evidence by and with the consent of the parties:

Exhibit 1:

- a.) A Topographical Map
- b.) A Planimetric Sheet
- c.) A Planimetric Sheet, 1:12,500
- d.) Survey Diagram by Horace Manderson passed 3rd January 2013

Exhibit 2:

- a.) Will of Robert L. Anderson dated 21st March 1953
- b.) Certificate of Payment of Property Taxes dated 19th April 2010

Exhibit 3 a – z: Being the documents attached to Notice of Intention to Tender dated 19th December 2012 filed by the 2nd Defendant.

Exhibit 4: Certified Copy Duplicate Certificate of Title Registered at Volume 1445 Folio 270.

Exhibit 5:

- a.) Deed of Conveyance dated 14th February 1942
- b.) Receipt dated 20th July 1952

Exhibit 6: National Land Agency letter dated 30th March 2007.

Exhibit 7: Letter dated 28th July 2008 from the National Land Agency (with attachments).

Exhibit 8: Stamped Application to bring land under the operation of the Registration of Titles Act dated 4th December 2006.

Exhibit 9: Marriage Duplicate Register dated 21st August 1953

Exhibit 10: Copy Agreement for Sale date 1994 between Paul and Ethlyn Neil Anderson and Thomas Anderson.

Exhibit 11: Surveyors Diagram prepared by MC Dyce on the 6th May 2007 Examination # R44159

Exhibit 12: Draft Declaration of Thomas Anderson

Exhibit 13: Death Certificate of Robert Anderson

Exhibit 14: Order in Plaintiff No. 27/08 dated 30th August 2011

Exhibit 17: Certified Copy Title being Volume 19 Folio 41 of the Register Book of Titles.

- [3] Exhibits 15 and 16 were admitted pursuant to Interlocutory Orders made previously.
Exhibit 15: is the Surveyors' Report of Horace Manderson conducted on 2nd May 2013
Exhibit 16: is the 2nd Defendant's expert's Reply to the Expert Report of Horace Manderson dated 3rd June 2013.
- [4] The Claimant was the first person to give evidence. She is now 93 years of age. She was able to identify her signature and her witness statement dated 9th November 2012. The Defendant applied to strike out on the grounds of hearsay, portions of paragraph 16, 18, 19, 22 and 25 of her witness statement. Having heard submissions I decided as follows:
- Paragraph 16: the words "I rely" to "located" were struck out.
Paragraph 18: the second sentence was struck out.
Paragraph 25: I struck out the sentence commencing "My Attorney-at-Law" and ending with "flatly refused."
- [5] The Claimant applied for and was granted permission to amplify her witness statement by way of comment on the evidence of others. There was no objection to the application.
- [6] The Claimant's evidence in chief was to the effect that for over 60 years she had been in possession of land situated at Maidstone in Portland encompassing 4.1649 hectares and now registered at Volume 1445 Folio 270 of the Register Book of Titles. She married Maxwell Anderson on the 18th of April 1953. The land in question had first been purchased by her husband's brother Talbert Anderson from Herald Daughma. Talbert sold the land to Maxwell and the Claimant prior to his migration to the United States. The price was 30 shillings an acre. Herself and her husband moved onto the land. They built a board house comprising 2 bedrooms and a living room. They raised their children on the land. Crops were cultivated and cows grazed. After 7 years they moved

to Shrewsbury for reasons having to do with the education of one of the children. The farm remained on the land. Maxwell farmed the land along with their sons until his death in 1984. She said her children and grand children continued to farm the land. They had fenced the land.

- [7] She stated that she knew the Defendant since he was a little boy. His brother Donald even lived with her when he was 14 or 15 years old. His father was Joseph Anderson, her husband's brother.
- [8] In or about 2002 she retained an Attorney, Ian Grossett to apply to register the land. She says she gave him all documents including the receipt proving purchase. However he died before the process was completed and when she tried to retrieve her documents she was told they were either misplaced or destroyed in a fire. A receipt dated 15th July 2002 was put in as proof that Mr. Grossett was retained; see Exhibit 3 Statutory Declaration of Iris Anderson dated 12th October 2011 and attachments 1A - 3 and 1A - 4 thereto. In evidence were Declarations from Jonathan Lammie and Kenneth Weir (also a part of Exhibit 3 (R)). She had attorney Carl McDonald write letters on her behalf to the 1st Defendant relating to the said land. Proceedings were also commenced in the Residents Magistrates Court see 1a 7(a), part of Exhibit 3 (r). The Claimant, be it noted, went to the United States in 2007 to spend some time with her son there. She asserts that it was whilst she was away that efforts were made to survey her land.
- [9] The Claimant asserts that Mr. Heron Dale acted for the 1st Defendant in relation to an application in the estate of Talbert Anderson. Further that by letter dated 17th January 2007, Mr. Dale informed her that the land she occupied did not form part of Talbert Anderson's estate (exhibit 20). She said that this lulled her into complacency. The suit in the Resident Magistrates Court ended when a registered title was produced to the Court by the 1st Defendant and His Honour Mr. Facey said he had no jurisdiction. The Claimant asserts that the registered title obtained by the First Defendant was

fraudulently obtained as there was a failure to disclose her possession and no notice of the application was served on her.

[10] By way of amplification she stated that she knew Mr. Huton Lammie and that his witness statement is incorrect. She said that she asked him to bear witness for her as Mr. Dale told her to get Declarations but he told her that he and the First Defendant were already in business. She also described in detail how herself and her husband went to pay property taxes. Tax receipts were put in evidence (Exhibit 19).

[11] When cross examined, the Claimant maintained her assertion of possession. She admitted that Robert Anderson was her husband's father. He owned Talbertfield. This was 56 acres. She asserted that before his death Robert showed each of his children the piece he would give them. It was suggested that Robert's will was probated in 1969 with Joseph Anderson as executor. She said she did not know that. She admitted that she owned other land at Shrewsbury Talbertfield and Maidstone. Maxwell got land from his father known as Curly Hill. It was 9 acres. She admitted she has a title for Shrewsbury. It got lost and she had to retain Mr. Grossett to get it back. The land in dispute was called Dormer Land. It was suggested that she never built a house on "Talbert" land and she replied, "mi can carry you and show you the posts that round there. Is a poor and dirty life I was living into a hut to make my life."

[12] She revealed that herself and Maxwell had about 6 children before they got married. Talbert died before Maxwell. She was challenged on her reason for not applying for title to the property when purchasing from Talbert and the exchange is instructive,

"Q: Talbert sell farm, why you never apply for Title

A: We have tax paper, no disturbance everything alright. We would have to get surveyor whey money to come from?

Q: They pay [tax] in Talbert name or yours?

A: Those time law neva strict like now. Just going on."

[13] When shown Exhibit 5(b) and when suggested that Talbert left Jamaica prior to 1952 and therefore she could not have bought the land in 1957, she replied,
"Mi papers them loss and I don't remember the year."

The witness was not able to remember the dates of birth or ages of her children.

[14] The Claimants first witness was Kieffer M. Thomas a Commissioned Land Surveyor. An objection was raised but I overruled the same and allowed the witness to be called for the purpose of proving a document which had already been disclosed. He indicated that he had been retained by Mr. H S Dale to do a survey and an objection was taken to the survey. By letter dated 10th October 2007 Exhibit 21, he reported to Mr. Dale. He identified Mr. Thomas Anderson as being among the persons present when he went to do the survey.

[15] The third witness was Jonathon Lammie. He is 78 years old and his witness statement dated 9th November 2012 stood as his evidence in chief. In that statement he stated that he knew the land at Maidstone since he was a child. He had seen Maxwell, Iris and their children on the land. He used to take a shortcut through the land to go to school. He spoke of the board house and of seeing them cultivate the land. In the 1950's he stated he worked on the land for Maxwell over a period of 6 or 7 years.

[16] When cross examined he admitted there was a shorter route to his school than the one by way of the land at Maidstone. He maintained that when he was at school he lived near Miss Iris and it was shorter to go by the land. He had been aware of Miss Iris on the land before the 1950's. In 1947 he would have been 13 years years old. The following exchange occurred:

“Q: Suggest to you Iris and Maxwell never built any home

A: No don't tell me that, go a Bourbon people will tell you Maxwell and Iris have house with him children.”

[17] He maintained also that he saw Iris' children farm the land in 2006. He stated that Huton Lammie is his brother. They grew together in the same house. He described how he helped with his father's mule to feed the mill while working for Maxwell on the land. When it was suggested to him that Thomas Anderson was on the land in 1959, the witness laughed and said,

“A couple years a back I know him. Never know him before. I was living about ¼ mile from where Maxwell was living.”

[18] The Claimant’s next witness was Leroy Anderson. He was 63 years old. His witness statement stood as his evidence in chief. He was one of the Claimant’s children. His Birth Certificate was admitted as Exhibit #22. Amplification was allowed with regard to evidence given by the Claimant. He was asked about the time period when he farmed the land, he after a pause said,

“I was about 37 years old when I came back. I started farming again on the same land. No don’t stop only when Mr. Anderson and Lloyd came and fire gunshot at me and I leave.”

[19] An objection was taken to the last 5 lines of paragraph 11 of his witness statement and these were struck out as hearsay.

[20] When cross examined he said it could not be true to say that he stopped farming the land when his father died. He was unable to say when his mother bought the land. He was threatened by Thomas Anderson the same year the case was filed in 2011.

[21] He denied that if Iris wins the case he will get any land from her. He was adamant that he and his brother farm the land. The following exchange occurred,

“Q: Mas Joe was in charge from 1964 until 1980s

A: Mr. Joe don’t even walk on that land there is a boundary road to his land.

Q: Thomas bought it in 1994 and in possession since.

A: Only time I see him is when he and singer them come and fire

Q: Was Mr. Thomas Anderson arrested.

A: No, police say is family

Q: They were never charged?

A: No, Donald son gun get take away from him.”

[22] When it was suggested to him that his mother was not the owner of the land at Maidstone he said,

“That is your opinion. My mother could not be a squatter for so many years unmolested, so must be the owner.”

[23] There was no reexamination of this witness when his cross examination ended. The Claimant then applied to have the evidence of Kenneth Weir taken by video link. The application was however withdrawn after an objection was taken. The Claimant then applied to amend paragraphs 16(a) and (4) of the Particulars of Claim to read “together comprising 18 acres” and “in the 1940s”. An objection was taken but I granted the amendments. This is because the amendments reflected the evidence as received orally. The Claimant thereafter closed her case.

[24] The 2nd Defendant (Registrar of Titles) then made a submission that there was no case to answer. The Claimant opposed the application asserting that negligence was sufficient to show a want of bona fide for the purpose of s. 160 of the Registration of Titles Act. I upheld the application and dismissed the claim against the 2nd Defendant for the following reasons:

- A. There is no evidence to suggest a want of bona fides in the 2nd Defendant as per s. 160 of the Registration of Titles Act. I would add nor is there evidence of negligence bordering on recklessness, which would be necessary to amount to a want of bona fides.
- B. In any event, the sole remedy claimed is for possession and that remedy could not possibly be granted against the 2nd Defendant. One day’s trial cost of \$20,000.00 was granted to the 2nd Defendant against the Claimant. Such costs to be paid on or before the 30th of August 2013.

[25] The First Defendant’s Counsel opened her case by relying on the Skeleton Submission to be found at page 4 of the Bundle of Documents #2. The First Defendant asserts that he purchased the land from Talbert’s estate and then applied to the Registrar of Titles. He has, it was submitted, been in undisturbed possession from 1994 to 2008. When title was granted, any equitable interest was extinguished unless there was fraud. It was submitted that there was no real evidence to support the Claimant’s assertion of purchase. Further, there was no evidence that, the 1st Defendant, was aware of her possession. It was submitted that the new title defeated any equitable interest the Claimant might have had.

- [26] The First Defendant then gave evidence. He stated that he resides in Los Angeles California. He is retired but formerly worked with an Engineering Company in Aerospace Industries. He said that he could not describe in what capacity he worked as it was "classified." He stated that he had a degree in Economics and Law. His witness statement dated 12th November 2012 was allowed to stand as his evidence in chief. Amplification was allowed, there being no objection.
- [27] Tax receipts for 2006-2013 were admitted without objection as Exhibit 24. The witness amended paragraph 4 of his statement to read "April 1994." He denied ever threatening Leroy Anderson. He also denied being present at the survey as on both occasions he was out of the country. He was unaware of Leroy Anderson having lunch at his parents' house.
- [28] In his witness statement the First Defendant stated that he is the registered proprietor of the land. He purchased the land in or around April 1994 for US\$150.00 per acre from Paul Anderson, Ethelyn Anderson and Neil Anderson. They were beneficiaries of the estate Talbert Anderson. He had been in possession since then.
- [29] He had the lands surveyed on the 6th May 2007 by M.C. Dyce. On the 15th January 2008 he was granted Letters of Administration in the estate Talbert Anderson. In or about 2009 he applied for registered title and this was issued to him on the 18th November 2010. He identified his Statutory Declaration made in support of that application. He said there was an error as Talbert Anderson is not his father but his uncle. He said he did not read the Declaration before he signed it and relied on written instructions he prepared in support of that assertion. Furthermore as the supporting Declaration of Donald Anderson and Huton Lammie clearly state, he was Talbert's nephew; and, as the Oath of Administrator and Consent of Beneficiaries also say this, his statement in the Declaration must have been an error.
- [30] I am prepared to accept that the First Defendant's statement in the Declaration that he was the son of Talbert was a typographical error and was not the result of fraud or fraudulent intent.

- [31] The 1st Defendant gives the history of the land to the effect that the lands were originally owned by Harold Daughma. In or about 1949 Robert Anderson purchased it, “for and on behalf of” Talbert Anderson. Talbert having left Jamaica in 1947 never to return. Talbert was Robert’s son. After Robert’s death Francella Anderson took charge, living on and cultivating the land until 1964 when she died. Joseph Anderson, the First Defendant’s father, then occupied the land on behalf of Talbert until his death in 1994. The First Defendant alleges that he farmed the land between 1959 and 1960. He denies that the Claimant or her husband Maxwell ever occupied the land as owner. He stated that in 1960 he lived for one year with Talbert (his uncle) in the Bronx, New York. He said in the 1970s and 80s his father (Joseph) raised horses and mules on the land.
- [32] In 1994, the First Defendant asserts, he purchased the 3 parcels of land owned by Talbert Anderson from the Estate Talbert Anderson. He stated that the estate Robert Anderson was wound up in the year 1963. It was, he said, not possible that the Claimant could have purchased the land in 1957 from Talbert Anderson. After Talbert’s death, the lands were put up for sale. The First Defendant saw a for sale sign on it and contacted Talbert’s sons. He bought all three parcels as that is what the estate was selling. His main interest was the land at Mount Pleasant where his father was buried.
- [33] At paragraph 22 of his witness statement he asserts that at his father’s funeral the Claimant enquired why had he buried Joseph on Mount Pleasant when it was up for sale. He told her he was buying the 3 parcels up for sale. The Claimant never at that point told him she had purchased the land. He asserts that since 2008 the Claimant had written proof of his purchase of the land as this was served on her attorneys when Plaintiff No. 27/08 was brought in the Portland Resident’s Magistrates Court. He asserts that Maxwell Anderson (The Claimant’s husband) owned other lands being “Israel” and “Willy.”
- [34] The 1st Defendant denied committing fraud, and denied that the Claimant occupied the land. He denied she was in possession for 30 years and hence he says he had no duty to advise the Registrar of Titles.

[35] When cross examined, he was asked why he gave his occupation in the Oath of Administrator (Exhibit 3(f)) as an attorney-at-Law. He responded that he practiced law for about 3 months. This was his last occupation. He said he retired and turned in his Bar Certificate because of illness. This was in 1987. He admitted that in 2007 when he signed the Oath it was not exactly true to say he was an attorney-at-Law.

[36] He admitted that as an attorney he knew the importance of an oath. It was a solemn declaration. He was also shown a document and asked whether in 2009 he was also styling himself as attorney-at-Law. An objection was taken but I allowed the line of cross examination as it went to credit. The witness denied styling himself as a lawyer, but admitted he was so described because "they stipulate since I was a lawyer I am a lawyer." An attempt to admit the document as containing a previous inconsistent statement was refused by me as the witness admitted its contents and provided an explanation.

[37] The witness indicated that at paragraph 1 of the Oath of Administrator he meant to say that he paid Talbert a visit in 1982, not that Talbert was on a visit to the US in 1982. He described it as an obvious typographical error.

[38] It was also suggested that his statement of a last place of abode as Talbertfield was not true. The First Defendant responded that it was his "last address in Jamaica." The following exchange occurred,

"Q: Suggest you making up a story you know it is a lie

A: Congratulations and your client is the one that said so."

[39] The witness's attention was drawn to Exhibit 3(a). He acknowledged his signature. He was asked what was the evidence of a gift. He responded,

"My Lord I bought the land sir."

[40] He admitted that he submitted no document evidencing a gift to him of the land. The following exchange occurred,

"Q: So what you signed to is not the truth

A: I misread it, did not read the document
Q: If you bought it in 1994 why didn't you submit your sale agreement?
A: I submit the Sales Agreement to the lawyer or I believe I did
Q: Which lawyer
A: A lawyer called Maragh

[41] He said that the sale to him was handled by Mr. Grossett. He was asked why, if he knew Talbert was in possession through an agent until 6th December 1982, was that not stated in the Statutory Declaration. He gave no satisfactory explanation for the omission. The witness was challenged to produce his passport to demonstrate whether he was in Jamaica on the 24th September 2007 when the surveyor attended. The passport was not produced. It was suggested that since 2007 at the latest, he knew Iris Anderson was claiming the land. He denied such knowledge. He could not recall whether it was told to him she had commenced a survey. He admitted his brother was present on the 24th of September 2007 and signed on his behalf.

[42] The following exchange occurred,

“Q: Did you not consider Iris bringing a surveyor to be important?
A: Yes
Q: You never asked him (his brother) why?
A: No
Q: You must have been aware Iris had sued your brother over land
A: Not over the land but she sued him.
Q: For what?
A: She sued him for something, trespass
Q: Trespass on what land?
A: Many lands there
Q: Suggest you are aware she sued Lloyd for trespassing on the same land in
Dispute
A: No.”

[43] The witness was then cross examined about the Defence which was filed in 2009 in the Resident Magistrates Court (Exhibit 3r). He admitted that Lloyd was his agent, and would tell him what was happening with the land. He admitted attending the Port

Antonio Resident Magistrates Court, but could not say if it was in January 2009. His cross examination was otherwise uneventful and suggestions were put and denied.

[44] When re-examined he denied any involvement in the case in the Port Antonio Resident Magistrates Court. In answer to the Court he said that he walked the land before he purchased it. He said it was all wood land and there was no cultivation at all. This was about 1994.

[45] The matter adjourned on the 17th of June 2013 and resumed on the 5th of July 2013. Mr. Huton Lammie was the First Defendant's next witness. He asked to be affirmed on the basis that his religion does not allow him to swear. This was allowed and the witness was affirmed. He said he was a retired teacher. He was principal of the Maidstone All Age School when he retired. His witness statement dated 16th November 2012 was allowed to stand as his evidence in chief.

[46] In that statement Mr. Huton Lammie says he was born on the 15th of June 1943. He had been acquainted with the said lands in dispute for over 60 years. He had to walk past it when he attended Maidstone All Age School, and because he farmed with his father at a nearby parcel of land. He first saw Dr. Harold Daughma farming the land. In the 1950's he saw Robert Anderson and his family farm the land. In 1959 and 1960 he recalls seeing Thomas Anderson farm it. In the 1970's and 80's he saw Joseph Anderson feeding his horses and mules on it. He also saw Maxwell Anderson with cows on it in the 1970s. He never saw Iris Anderson on it. In the 1990's he describes the land as being in ruinate. Thomas Anderson advised him he had purchased the land. The witness says he was asked to take possession and plant. He declined as he could not do that and continue as principal and also manage his father's own land. He said in or about 1998 the road to the land was improved, so that motor vehicles could be driven on it.

[47] The witness said sometime in 2006 he was stopped by Iris Anderson and she told him she wanted to do farming on the land. He told her Thomas Anderson had already purchased it and she would have to get his permission. She told him that Thomas was lying when he said he purchased the land. In 2007 he saw Thomas Anderson and other

men clearing the land. When cross examined, the witness said he had been a Justice of the Peace for 13 years. He admitted that Thomas Anderson had been his friend since his school days. He was like a brother. He said that it was close to 1994 when Thomas told him he had purchased the land. Might have been in 1994 or the year after. He admitted that in 1947 or 1948 he would have been a toddler. But denied that he could not recall that Harold Daughma farmed the land. He claimed to recall things even before he was 3 years old.

[48] The Witness said he had never seen the Claimant farm the land. He was shown Exhibit 3(b) being a Declaration he signed. The following exchange occurred,

“Q: paragraph 3 is not true

A: I can say categorically that land belongs to Talbert Anderson

Q: The statement that you first “knew,” you said you never knew him or see him on the land

A: My lawyer, the statement there is confusing but fact is Talbert Anderson is the owner after Harold Daughma left it.”

Later on,

“Q: When you say you “knew”, is what people tell you?

A: Yes, I suppose so.”

[49] It was suggested to the witness that Mrs. Iris Anderson never came to say she wanted to do farming, the following very interesting answer came,

“(Smile) that was the approach. She say she like me to be a witness because she want to do farming. I told her I can’t be because Thomas told me that he bought it.

Q: When she came to you and told you that she wanted you to be a witness, I suggest he never told you he wanted to buy the land

Obj: He never said that

J: Will allow

A: I told her I would not be a witness but if she get somebody else I would witness the signature. I told her immediately that Thomas Anderson had bought the land.”

[50] He admitted witnessing Statutory Declarations on behalf of Iris. He acknowledged doing so for Kenneth Weir and for his brother Jonathon Lammie. This was in 2006. The

witness admitted also to knowing that Iris Anderson had sued Lloyd Anderson in the Portland Residents Magistrates Court. He admitted to swearing a Declaration in 2008 that Thomas Anderson was in open undisturbed possession of the land. Interestingly, the witness, whilst denying the Claimant had farmed the land, admitted seeing Maxwell and his sons. He saw them in 1950s, 60s and 70s with cows on the land,

“A: Even in the 1980s a lot of wild cows eating down everybody’s property”

When pressed he “could not recall” if he saw them on the land in the 1990s and 2000s.

[51] When re-examined he was asked why he witnessed the signatures of the Claimant’s Declarants and said,

“The condition of the property. I would be happy to see somebody really doing something on it.”

[52] The First Defendant’s next witness was Lloyd Clinton Anderson. He too asked and was allowed to affirm for religious reasons. He described himself as a Minister of Religion. He is the First Defendant’s brother. His witness statement dated 20th November 2012 was allowed to stand as his evidence in chief. An objection was taken to a sentence in the 3rd paragraph beginning “based on [to] Talbert Anderson.” I upheld the objection and struck out the sentence as being hearsay and inadmissible.

[53] In his statement the witness said as a boy he used to pick coconuts on the said land. This was in 1965 to 1968. Neither Iris nor Maxwell Anderson were in possession at that time. He said that in the 1970s and 80s his father raised horses and mules on the land. His father had asked to be buried beside his parents at Mount Pleasant. That land was owned by the estate Talbert Anderson which was inherited from Robert Anderson. He knew the First Defendant had purchased land at Maidstone as the Agreement for Sale was shown to him by the First Defendant.

[54] The road to Maidstone was asphalted in 1998 and the Claimant only started to make a claim after this occurred. He said the Claimant knew that the First Defendant had purchased the land as a copy of the agreement was served on her attorneys in Plaintiff 07

of 2008, a case which he (the witness) was the Defendant. In that case, on his attorney's advice, he filed a Defence stating that he was the agent of Mr. Thomas Anderson.

[55] When cross examined he gave his date of birth as 25th of the April 1953. He said when he was sued he did not inform his brother immediately. The Defence filed in the Resident Magistrates Court was based on what he told his attorney Ms. Ridguard. He denied knowing whether his cousin Donald was a licensed firearm holder or whether that firearm was taken away.

[56] He admitted that he knew since 1994 that his brother had purchased the land in question. He stated that in 2007 he became aware that Iris Anderson was claiming that she owned the land. He admitted to showing the valuer Mr. Keith Miller the land. He drove Mr Miller around it, but Mr. Miller did not physically go over the land. That valuation was done on his brother's (First Defendants') instructions.

[57] There was no re-examination, but in answer to the questions from the Court the witness stated that in the period 1970 s to present he lived in Port Antonio and that it was far away from the land in issue. In questions arising the witness said that he went to the land in the 1970s as often as "3 times per month or 3 times per year." "Every time Thomas came to Jamaica I accompany him to Bourbon and we have to pass the land."

[58] The First Defendants' attorney applied and was given permission to ask some further questions in chief of the witness. He admitted that he, on behalf of Thomas, objected to a survey. He denied introducing anyone to the surveyor as Thomas. When cross examined he maintained that his brother was in California when the survey was done.

[59] The 1st Defendant then closed his case and the matter was adjourned to the 20th September 2013 for submissions to be made orally. Written submissions were to be filed and exchanged on or before the 13th of September 2013.

[60] The parties should rest assured that I have carefully perused and considered the submissions placed before me. I will not recount them in detail in the interest of not extending an already lengthy judgement.

[61] Suffice it to say that the Claimant has urged the Court to accept that the First Defendant made fraudulent Declarations when applying for title. In particular he failed to mention his alleged purchase of the land and failed to disclose that the Claimant was a Claimant for the land and that there had been litigation concerning the land. The First Defendants' Counsel suggested that the omission to mention the sale might be a desire to avoid paying taxes and because the basis of the application was a possessory title. Both explanations are problematic, the former smacks of an intent to defraud the revenue; the latter is unconvincing because what better way to support a possessory claim than to demonstrate purchase? The First Defendants' Counsel relied on the Claimants shift of evidence from 9 to 18 and the year of purchase from 1957 to 1947 as demonstrative of her lack of credibility.

[62] I found several items of documentary evidence of particular importance. The Claimant was in possession of tax receipts going back to the 1960's. (See Exhibit 18). She explains she had them in a suitcase. Talbert Anderson's marriage Certificate confirms he got married in the United States in 1951. (Exhibit 23). Caveat against Registration dated 12th October, 2011 is supported by a Statutory Declaration of Iris Anderson dated 12th October 2011 (Exhibit Q and R). This in turn has attached a letter dated 2nd December 2008 from Mr. H. S. Dale attorney at law which states in part that Mrs. Iris Anderson alleged she had purchased 2 lots of land at Maidstone from Talberg (sic) Anderson. Also attached to that exhibit is a Declaration dated 15th November 2006 from the Claimant again alleging she had purchased the land.

[63] Both Jonathan Lammie and Kenneth Weir signed solemn declarations in her support (also part of Exhibit 3R). In January 2008 a Plaintiff was lodged by the Claimant against Lloyd Anderson for damages for trespass. The claim was in respect of land at Maidstone. It was provoked by the objection taken to the Claimant's survey or attempt to survey. Another claim was filed against Mr. Donald Anderson on the 23 October 2007. (See attachments to Exhibit 3R). The defendants in each of these actions allege that the land was bought by Mr. Thomas Anderson and that the Claimant was never in

possession. These defences were filed on the 27th January 2009 and 21st October 2009 respectively. It is important to note that in his application for Administration of the Estate Talbert Anderson, the First Defendant (Thomas Anderson) listed as an asset of the estate 36,421.70 square metres at Maidstone in Portland. See also his Oath of Administrator, Exhibit 3X. This document makes no reference to his purchase of any part of the estate or his beneficial interest in it.

[64] Mr. Thomas Anderson is similarly less than candid in his application to bring land under the Registration of Titles Act. See (Exhibit 3A). That document is dated 10th September 2008 and in it the Defendant claims to own the land at Maidstone. The documentation relied on in support does not refer to the fact that the Claimant had commenced legal action for possession of the land on the 23rd October 2007 (237/07) and the 28 January 2008 Plaintiff 27/08. Defences were filed on the 21st October 2009 and 27 January 2009 respectively. On the contrary the Declarations of Huton Lammie, 25th November 2009 Donald Anderson 12th November 2009, and Thomas Anderson dated 11th November 2009 assert that the First Defendant enjoyed “undisputed, undisturbed and continuous” possession. (Exhibit 3b, c, d). Also none of the Declarations reference the first Defendant’s alleged purchase of the land although they reference his application to be administrator of the estate Talbert Anderson.

[65] Support for the contention that the land declared to be part of the estate Talbert Anderson at the date of his death is the same land Thomas Anderson claims to have purchased is to be found in Transfer Tax Certificate dated 12th March, 2007 and note the similarity in description of land. Exhibit 3 (h). The First Defendants relies also on a handwritten Declaration dated 6th September 2008 which refers to his purchase of the land. This court notes the Plan of Part of Maidstone prepared by Horace Manderson on 2nd May 2013 (Exhibit 15 and the 2nd Defendant’s expert reply (Exhibit 16). These confirm that the land the Claimant claims to possess is substantially the land registered at Volume 1445 Folio 270 of the Register Book of Titles.

[66] The documentation notwithstanding, there is very little by way of objective hard evidence to assist this court to determine the really crucial issue. That is whether the Claimant has been in open and undisturbed possession for the period she alleges. In this regard I have seen and heard all witnesses. I observed their demeanour and formed a view as to their candour. I accept the Claimant and her witnesses as witnesses of truth. I do believe that the Claimant's sons were run off the land at gun point by agents of the First Defendant. I do accept that they had been farming and rearing livestock on the land for a considerable period. I accept also that the Claimant at one time lived on the land and even constructed a dwelling there. Mr. Jonathan Lammie also impressed me as truthful. I find that the 1st Defendant Thomas Anderson was present when objection was taken to the Claimant's survey of the property in September 2007.

[67] The Defendant Thomas Anderson did not similarly impress. It is strange that a person with legal training, as he asserts he had, would not read carefully the Declarations before signing. This is his explanation for the inaccuracies contained therein. His failure to disclose the existence of the Claimant's claim was indicative of a want of candour. It is rather odd that he, someone with legal training, would purchase land from beneficiaries of an estate which had not yet been probated. He then sought to be administrator of an estate from which he asserts he had purchased the land. His failure to disclose that he purchased items from the estate subsequent to the death of the proprietor suggests he may have been aware of his position of conflict. I also found his denial of knowledge of the Claim brought by the Claimant to be unconvincing. I have no doubt that his brother, who defended that claim on his behalf and who objected to the survey on his behalf, brought the existence of the action to his attention very promptly.

[68] This of course is not to deny that there were inconsistencies in the Claimant's evidence. Her inaccuracies with dates and sequence of events can however be explained by her age. What I accept is that herself and her husband purchased and had been in possession and done farming and livestock rearing on the land (Personally and later

through the activities of her children) for over 30 years. The Claimant would therefore be entitled to a possessory claim to the land.

[69] The Defendants say that even if that is so the first Registration of Title defeats her unregistered interest. **Chisholm v. Hall (1959) 1 W.I.R. 413 @ 421** and **Thomas v. Thomas HCV 3144 CL 2005 JMT 14th September 2011**. This is settled law and I accept it as such.

[70] The Claimant contends that the Registered Title does not defeat her interest because it was obtained by fraud see S.70. Registration of Titles Act. I hold that the failure by the First Defendant when making the application for title, to disclose: a) The Claimant's claim to the land and in particular her attempt to survey it and her action in the Resident Magistrates Court and b) The possession and acts of possession of the Claimant and her sons, constitutes a fraud sufficient to set aside the registered Title which he purports to rely upon.

[71] Fraud in this context denotes dishonesty or dishonest intent. **Assets Co Ltd v Mere Roihi and Others (1905) AC 176** , **Alele v Honnibal & Brown SCCA 111/789** (upheld on appeal by Judicial Committee of Privy Council) and **Daley V RBTT et al CL 1995/D162 Per Sykes J @ para 113 and @118**

“118. I have now established under the RTA contrived ignorance or wilful blindness is sufficient for a finding of dishonesty. Although there are dicta that suggest that fraud is not confined to the obtaining of the transfer or in securing registration, it now seems well established that fraud committed in securing registration is included (see Bahr v. Nicolay (No. 2) per Wilson and Toohey JJ @ 633 “the fraud to which SS68 and 134 refer is fraud committed in the act of acquiring a registered title” and Mason CJ and Dawson J at page 615 “for our part we do not see the illustrations given and the statements made in the cases as amounting to definitive pronouncements that fraud is confined to fraud in the obtaining of a transfer or in securing registration.”)”

[72] Conduct which the First Defendant knowingly embarked upon in order to obtain a registered title but which the First Defendant knew to be wrong is dishonesty. In this

case the Defendant at the time he applied for title knew that the Claimant was asserting an interest. He also knew that her sons had been in possession and doing farming hence the use of men with guns to chase them off. He also knew that the Claimant had attempted to survey the land. The Defendant knew that such disclosures would be likely to result in his application for title being delayed or refused hence his decision not to mention these things. Incidentally it matters not for present purposes that the omission to mention these matters may have been on legal advice. The fraud is the knowledge of the truth and the withholding of facts with intent to get title issued. Doing so on legal advice does not change the fact it was done or the reason it was done. The lawyer being the Defendant's agent. It bears repeating that fraud under the Registration of Titles Act is not necessarily the crime of fraud and hence actus reus and mens rea as clinically defined and proof beyond reasonable doubt are not prerequisites. The acts or omissions of his lawyers are the Defendants acts for this purpose. I hold that he failed to disclose material particulars and falsely alleged that no one had challenged his claim when this was patently not so.

[73] I am satisfied that whereas a first Registration of Title extinguishes prior equitable claims, it will not do so if the Registration is the result of fraud. Furthermore a subsequent Registration for example by transfer to a new owner does not extinguish a possessory Title acquired subsequent to a lawful first Registration, see per Lord Jenkins ***Campbell v Hall (1959) 1 WIR page 421 H to 422 I***. Dicta to the contrary in some recent authorities must be regarded as per in curiam that decision.

[74] The case before me concerns a first registration which I have found to have been obtained in reliance on fraudulent information, evidence and declarations. It therefore ought not to defeat the Claimant's possessory title and her ability to rely on the Statute of Limitations.

[75] In the result I grant the following relief:

- a). It is Ordered that the Title registered at Volume 1445 Folio 270 of the Register Book of Titles be cancelled by the Registrar of Titles as the

application to register the land at Maidstone contained therein was tainted by fraud.

- b). It is Declared that the Claimant is the true owner of all that parcel of land containing 3.4328 hectares (8.483 acres) situated in Maidstone in the parish of Portland as shown on the Plan of Maidstone prepared by Horace A Manderson on the 2nd May 2013, having purchased the said land from Talbert Anderson (sometimes referred to as Talberg Anderson) and having remained in sole open continuous peaceful undisturbed and undisputed possession for in excess of 12 years.
- c). Costs to the Claimant to be Agreed or taxed.

David Batts
Puisne Judge
9th May, 2014