



[2023] JMSC Civ. 93

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV00354

BETWEEN	ELGAR COLEMAN	CLAIMANT / RESPONDENT
AND	ADMINISTRATOR-GENERAL OF JAMAICA	1ST DEFENDANT / 1ST APPLICANT
AND	THE REGISTRAR OF TITLES	2ND DEFENDANT / 2ND APPLICANT
AND	THE ATTORNEY-GENERAL OF JAMAICA	3RD DEFENDANT / 3RD APPLICANT
AND	THE COMMISSIONER OF LANDS	4TH DEFENDANT / 4TH APPLICANT

Miss Sheika Lawrence for the 1st Defendant/Applicant instructed by the Administrator General of Jamaica

Miss Lisa White, Deputy Solicitor General, instructed by the Director of State Proceedings for the 2nd to 4th Defendants/Applicants

Mr Xavier T. Leveridge and Mr D'Angello G. Foster for the Claimant/Respondent instructed by Leveridge, Foster and Company.

Heard: November 22, 2022 and April 21, 2023.

IN CHAMBERS

Civil Procedure: Application to strike out the statement of case – Civil Procedure Rule 26.3– Adding of a party after the case management conference – beneficial

interest in land – adverse possession of land – Limitation of Actions Act – Crown Property (Vesting) Act

M. JACKSON, J (AG.)

Introduction

- [1] Before me are two applications filed by the Administrator-General of Jamaica on August 22, 2022, and the Attorney General of Jamaica on behalf of the Registrar of Titles, the Attorney-General, and the Commissioner of Lands on September 15, 2022. Hereinafter referred to the “applicants”.
- [2] Together, they seek orders from this court to strike out Mr Elgar Coleman's statement of case and to lift or remove the interim injunction imposed against the 2nd to 4th applicants.
- [3] The grounds relied on by them were conveniently summarised as follows:
- (a) The claim does not establish a cause of action against the Administrator-General of Jamaica (“the Administrator-General) and has no reasonable prospect of success.
 - (b) The circumstances of the transmission and transfer raise doubts about the right to an injunction, and there was no basis in law for imposing it.
 - (c) The Commissioner of Lands is a crown servant who can be sued or sued in her own name.
 - (d) The Attorney-General is an unnecessary party to the claim.
 - (e) The necessary condition precedent in law for the Registrar of Title to be named as a defendant has not been satisfied.

- (f) In the claim as framed, there are no rights in law to be determined concerning the respondent and the Registrar of Titles, the Attorney-General, and the Commissioner of Lands. Accordingly, an injunction, which aims to regulate the position or preserve the status quo, is unnecessary.
- (g) There is no serious issue to be tried.
- (h) The balance of inconvenience lies in favour of removing the injunction.
- (i) A claim for damages is unsustainable.

[4] The main essence of these proceedings is that Mr Elgar Coleman, by his claim, is seeking to challenge the transfer of a property to the Commissioner of Lands on the basis that he is the adopted child of the now-deceased couple, Mr Joseph Steele and Mrs Olive Steele and had lived at their residence in Content Reading Pen, in the parish of Saint James (“the subject property”) with them until their deaths.

[5] Mr Steele predeceased Mrs Steele, and following her death, the Administrator-General of Jamaica (“Administrator-General”), having received formal and written instructions that she died *bona vacantia*, applied for and obtained a grant of Letters of Administration in respect of her estate and, thereafter, transferred the subject property to the Commissioner of Lands in keeping with her statutory powers.

[6] By his claim, Mr Coleman now asserts that the transfer of the subject property to the Commissioner of Lands was improper because he has a legal and beneficial interest in it as well as by adverse possession.

[7] Before delving into the substantive applications, this court deems it necessary to provide a detailed background of the historical facts that led to the institution of

the substantive claim as well as the applications. To do this, it will be prudent to consider the affidavit evidence of both sides.

The Historical Background and the Affidavit Evidence

The Position of Mr Coleman's Affidavit

- [8]** Mr Coleman states that at the age of 11, he was taken by Mr Steele and Mrs Steele to live in their home as their “adopted child” and remained living with them until their deaths. It was not a formal adoption. At the time of Mrs Steele’s death in 1972, he stated that he was 35 years old, and after her death, he remained and lived on the subject property with his family in quiet and undisturbed possession. He further contends that since then, he has amassed over 49 years of undisturbed and quiet possession and, thus, by 1984, was entitled to the subject property by way of adverse possession.
- [9]** He further reported that he cared for Mrs Steele in the last years of her life and paid her funeral expenses without assistance from the rest of the family.
- [10]** He also stated that he paid all the property taxes. As proof of this, he placed the following documents before the court:
- i. Notice of Assessment of Property for 1988.
 - ii. Notice of Assessment for Tax Year 1993 Valuation.
 - iii. Government of Jamaica Inland Revenue Department receipt for tax year 1993-1994.
 - iv. Government of Jamaica Inland Revenue Department receipt for tax year 1994-1995.
- [11]** He went on to state that between 1993 and 1994, he retained the services of counsel, Mr Victor Elliot, who is now deceased, to obtain a grant of Letters of Administration in Mrs Steele’s estate. Further, in January 2021, he retained the

services of the law firm Clayton Morgan & Company for an update. In February 2021, he said that he was advised that the Administrator-General was registered on the transmission on March 4, 2011, and that the subject property is about to be transferred to the Commissioner of Lands.

- [12] Based on the information received, he stated that he lodged a caveat against the subject property in October 2021 and filed his fixed-date claim form on February 3, 2022, against the Administrator-General solely. He also stated that he filed his application for the injunction to prevent the transfer of the subject property to the Commission of Lands pending the determination of his application for the caveat with the Offices of the Registrar of Title. Five days later, on February 8, 2022, he filed an affidavit supporting the claim.
- [13] He asserts that the caveat lapsed before he could secure a date with the court, notwithstanding his several attempts and dialogue with the Court's Registry. He further reported that on January 20, 2022, he was given a 14-day notice of the transfer, which was to be effected by the Administrator-General. He further reported that he eventually secured a court date for the hearing of his injunction. That date was, however, March 7, 2022. The subject property was transferred to the Commissioner of Lands on December 22, 2021
- [14] With that revelation, Mr Coleman stated that he filed an amended fixed-date claim form on April 29, 2022, and added the Registrar of Titles and the Attorney-General of Jamaica as defendants. He also sought alternative relief for the cancellation of the Certificate of Title issued to the Commissioner of Lands and the issue of a new Certificate of Title in his name. He relied on section 158(2) of the **Registration of Titles Act** to support this position.
- [15] On June 28, 2022, he filed two affidavits from Miss Claudette Gordon and Mr Carey Devon Watson, supporting the amended claim. Both are his neighbours. Their central plank of evidence is that Mr Coleman lived on the subject property

with his family for over 12 years, and they considered him to be the owner of the subject property.

[16] On July 6, 2022, he again filed a further amended fixed-date claim form and added the Commissioner of Lands as the 4th defendant to the claim and sought the following declarations:

1. He is the beneficial owner of the property located at Content, Reading Pen, Reading Post Office in the parish of Saint James registered at Volume 208 Folio 46 of the Register Book of Titles.
2. The transfer from the Administrator-General to the Commissioner of Lands effected by the Registrar of Titles on December 22, 2021, was improper.
3. That the transfer is to be set aside, or, in the alternative, damages awarded based on the property's value to be determined by a valuator appointed by the Registrar of the Supreme Court.

[17] He also expanded his grounds to include the following:

1. He has an equitable interest in the subject property.
2. He has resided on the subject property for over 70 years and was raised by Mr and Mrs Steele.
3. He lodged a caveat against the subject property, which recognises his equitable interest.
4. Pursuant to section 140 of the **Registration of Titles Act**, every caveat lodged against a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing upon the expiration of 14 days after the notice given to the caveator that such proprietor has applied for the registration of a transfer or other dealing unless in the meantime such application has been withdrawn.

5. Pursuant to section 158(2) of the **Registration of Titles Act**, a court has the power in the circumstances to make an order directing the Registrar to amend or cancel any instrument memorandum or entry relating to the land in such manner as appears to the court or a judge.
6. The Registrar of Titles effected a transfer of the subject property before notifying the caveator.
7. The Registrar of Titles transferred the subject property before the Notice of the Caveator was issued.
8. The Registrar of Titles effected a property transfer on December 22, 2021.
9. Damage would not be an adequate remedy for him, as he has had quiet and undisturbed possession since Miss Steele passed away in or around July 1972, and the property has been the residential home for himself and his entire family for approximately 49 years.

[18] On July 21, 2022, he filed a notice of application for court orders seeking an interim injunction directing the Registrar of Titles to immediately disclose all documents in the custody or possession of the National Land Agency or the Titles Office which were used to facilitate the transfer of the subject property. The interim injunction further seeks an order to bar any action to be taken on the Certificate of Title pending the hearing of the substantive action.

[19] Therefore, he contends that there are serious issues to be tried, particularly concerning his undisturbed occupation of the subject property since Mrs Steele's death in 1972. Further, he contends that if the transfer of the subject property to the Commissioner of Lands is effected, he and his family would be displaced, and, thus, damages would not be an adequate remedy in the circumstances.

[20] In support of his application for the interim injunction, he also relied on his affidavit filed on February 28, 2022, and an affidavit from Mr George Malcolm filed on July 21, 2022.

[21] The grounds for the interim injunction were on all fours, with the grounds relied on and articulated in the further amended fixed date claim form. For completeness, this court considers it prudent to highlight them once again. They are that:

- (a.) Since being adopted, he has continuously occupied the subject property for over 70 years.
- (b.) Since Mrs Steele's death, he has occupied the subject property with his wife and children for over 49 years.
- (c.) He paid taxes for the subject property until the Tax Administration of Jamaica stopped him.
- (d.) He spent a significant sum constructing a family home on the subject property during his unmolested possession for over 49 years.
- (e.) He lodged the caveat to assert his equitable interest on October 19, 2021.
- (f.) On January 20, 2022, he was served a notice to the caveator stating that the caveat lapsed 14 days from the service date.
- (g.) The endorsement showed that the transfer was made on December 22, 2021, long before he was served with the notice; as such, the caveat would have stayed the same.
- (h.) The Certificate of Title endorsed that the caveat lapsed on February 4, 2022. Even with this, the transfer was executed almost two months before the caveat lapsed.

- (i.) The next date for the Fixed Date Claim Form hearing is November 3, 2022, and the respondent fears that if the injunction is not granted, further transfer will be made, and the title will significantly prejudice him.
- (j.) That damages is not an adequate remedy as he has had undisturbed possession of the premises for 49 years and desires to continue to do so lawfully.
- (k.) He will be able to satisfy any loss suffered due to the injunction.

[22] On August 11, 2022, Y. Brown J imposed an interim injunction for 28 days to bar the Registrar of Titles, the Commissioner of Lands, and any other interested party from dealing with the subject property. The *inter partes* hearing was fixed for September 8, 2022. Given the development in the matter and the transfer to the Commissioner of Lands, it was never heard or dealt with.

The position of the Administrator-General

[23] Geraldine Bradford's affidavit, filed on August 22, 2022, fully articulated the Administrator-General's position. As will become apparent, her account contradicts that of Mr Coleman.

[24] The fulcrum of her evidence is that in 1972, Miss Jemina Hewitt, a niece of the deceased Mrs Steele, visited the office of the Administrator-General of Jamaica and completed a form in which she declared that Mrs Steele had died *bona vacantia*, leaving two properties, one of which is the subject property. She advised that Mr Victor Elliot had the titles to both properties.

[25] Miss Bradford reported that her office wrote to Mr Elliot requesting that he provide the names of any known persons interested in the subject property. On January 30, 1973, Mr Elliot responded to the request and provided the names of Mr Coleman, Miss Hewitt, and Mr Astor Steele, Mr Steele's illegitimate son.

- [26]** Miss Bradford further stated that Mr Elliot advised her office that Mr Coleman and Mr Astor Steele had occupied the subject property with Miss Hewitt's permission and had instructed them to lodge all income and pay all outgoings in a particular account named "Olive Steele Deceased (Estate)" until the grant of Letters of Administration was obtained.
- [27]** The Administrator-General applied to the Supreme Court for a grant of Letters of Administration, obtained on October 22, 1974.
- [28]** Miss Bradford further stated that on January 14, 1975, Mr Coleman, on his own, penned a letter to the Administrator-General and requested that favourable consideration be given to him based on his many years of service to Mrs Steele. He asked for this consideration from a moral perspective and in the interest of justice.
- [29]** In his letter, she also noted that Mr Coleman set out the history of the relationship between himself and Mr and Mrs Steele. She also stated that he informed her that before Mrs Steele's death, she had permitted him to construct a room on the subject property and provided him with financial support.
- [30]** Miss Bradford further stated that he advised her office that Mrs Steele had told him that he and his family could live in the apartment for as long as he wished. She further stated that he also asked that further consideration be given to the costs and the additions he made to the subject property.
- [31]** Miss Bradford stated that based on his plea for favourable consideration concerning the subject property, on April 22, 1975, the Administrator-General wrote to the Attorney-General requesting a waiver of the Crown's rights on behalf of Mr Coleman, Miss Hewitt and Mr Astor Steele.
- [32]** She further stated that between 1975 and 2012, several letters were exchanged between the office of the Administrator-General, the office of the Attorney-

General, Mr Coleman, Miss Hewitt, Mr Astor Steele, and their Attorneys-at-Law primarily to gather sufficient evidence of their respective interests for the waiver.

- [33] However, she stated that it was not successful. On December 11, 2012, the Attorney General informed the Administrator-General that the petition on behalf of Mr Coleman, Miss Hewitt, and Mr Astor Steele had failed.
- [34] She stated that on January 13, 2013, the Administrator-General wrote to Mr Coleman and informed him that his petition was denied. She further stated that the Administrator-General also asked him to indicate whether Miss Hewitt and Mr Astor Steele were still alive. He did not respond.
- [35] She stated that on March 4, 2011, the Administrator-General was registered on transmission and became the registered proprietor of the subject property.
- [36] On August 16, 2016, the Administrator-General notified the Commissioner of Lands of her intention to transfer the subject property. In keeping with that intention, a duly executed instrument of transfer was lodged with the Registrar of Titles on October 12, 2021. Mr Coleman, she further reported lodged the caveat against the subject property on October 19, 2021, with a view to preventing the transfer to the Commissioner of Lands.
- [37] On November 16, 2021, a notice was sent to the Registrar of Titles to warn Mr Coleman of the provisions of section 140 of the **Registration of Titles Act**. The transfer was lodged on December 22, 2021, and the notice was sent to Mr Coleman.
- [38] On January 20, 2022, the Registrar of Titles served a notice on Mr Coleman pursuant to section 140 of the **Registration of Titles Act**. On or around January 21, 2022, the Administrator-General received a copy notice to the caveator dated December 29, 2021. After which, the subject property was transferred to the Commissioner of Lands.

The Position of the Registrar of Titles, the Attorney-General and the Commissioner of Lands

[39] Miss Stephanie McLean and Miss Janelle Baugh both filed affidavits that captured the position of these applicants. Miss Stephanie McLean is the acting Registrar of Titles, and Miss Janelle Baugh is a Process Server employed by the National Land Agency at the Titles Office.

[40] Similar to the account given on behalf of the Administrator-General by Miss Bradford, Miss McLean averred that Mr and Mrs Steele had been joint owners of the subject property since 1934, and upon Mr Steele's death, a registration on transmission was effected in Mrs Steele's estate. She further stated that they also received information that Mrs Steele died intestate in or around July 18, 1972, and had no lawful heirs at the time of her death.

[41] Miss Mclean further deposed that her office, based on the evidence presented to them, was satisfied that the Administrator-General had the authority and was lawfully authorised to administer Mrs Steele's estate as *bona vacantia*. The subject property, she contended, was, therefore, properly transferred to the Commissioner of Lands in all the circumstances.

[42] Miss McLean further stated that in 2011, the Administrator-General transferred a section of the subject property for roadway works. In the said year, she further reported that an investigation carried out by the Estate Management Division of the Agency revealed that a two-story building was on the subject property. The investigation also revealed that one Michael Williams and his family had occupied the original section of the building and that the said Michael Williams had advised the investigator that Mr Coleman was overseas and did not live on the subject property.

[43] Miss McLean also averred that Mr Coleman's caveat lapsed 14 days after the notice to the caveator was served, and the transfer was effected by the lawful operation of sections 139 and 140 of the **Registration of Titles Act**. She stated

that Mr Coleman did not produce an injunction during the notice period to prevent the transfer.

[44] Miss Baugh's evidence concerns the notice to the caveator, which she deposed was served on Mr Coleman on January 20, 2022, and in accordance with section 140 of the **Registration of Titles Act**.

The Issues

[45] I find the following issues to be germane to the final resolution of the applications:

1. Whether Mr Coleman's statement of case should be struck out as it discloses no reasonable cause of action against the applicants.
2. Whether Mr Coleman's statement of the case should be struck out against the 2nd – 4th applicants for failure to comply with Part 19 of the **Supreme Court of Jamaica Civil Procedure Rules, 2002** ("CPR").
3. Whether the interim injunction is to continue.

Issue 1: Whether Mr Coleman's statement of case should be struck out as it discloses no reasonable cause of action against the applicants

[46] There can be no doubt that the applicants are together and resolute on this issue. They contend that the claim discloses no reasonable cause of action against them, and in those circumstances, the statement of case should be struck out.

[47] On behalf of the Administrator-General of Jamaica, Miss Sheika Lawrence emphasised that, at this stage of the proceedings, the 1st applicant is an unnecessary party. She stated that the subject property was already lawfully transferred, and it was no longer vested with the 1st applicant and is now vested with the Commissioner of Lands.

- [48] She submitted that in those circumstances, the Administrator-General would suffer great prejudice and undue expense if she were to remain as a defendant in the claim where she no longer has any interest or connection. In that regard, she further submitted that even if the court were to grant the declarations sought by Mr Coleman, the Administrator-General would not be able to honour it, based on the fact that the legal interest in the estate was no longer vested with her. In the final analysis, she submitted that in those circumstances, any order granted would be considered a nullity.
- [49] Miss Lisa White, Deputy Solicitor General instructed on behalf and for the Director of State Proceedings for the 2nd to 4th applicants, also argued that the claim, as pleaded, disclosed no cause of action against them.
- [50] Addressing the challenges with the Commissioner of Lands, Miss White argued that not only was there no cause of action disclosed in the further amended fixed date claim form against the Commissioner of Lands but that the law provides that the Commissioner of Lands cannot sue or be sued in her capacity as Commissioner of Lands. In this regard, she relied on the case of **Vincent Green v The Attorney General and others** (unreported) Supreme Court, Jamaica, Claim No. HCV 2156/2005, judgment delivered on November 27, 2006, and sections 3 and 4 of the **Crown Property (Vesting) Act**.
- [51] She also argued that the Commissioner of Lands' actions were in keeping with the lawful operation of sections 139 and 140 of the **Registration of Titles Act**, and Mr Coleman's evidence has failed to point to any act or claim of fraud.
- [52] Concerning the Attorney-General, she submitted that the action instituted against the Attorney-General was misconceived as, under the **Registration of Titles Act**, the Registrar of Titles can be sued in her own capacity. Accordingly, she argued that joining the Attorney-General in the proceedings as a defendant pursuant to the Crown Proceedings Act was superfluous. She further submitted

that the claim brought against the Registrar of Titles was an abuse of process of the court as their involvement in the matter was in keeping with the law.

[53] Miss White further contended that it is necessary to note that each of the applicants became associated, involved and connected with the matter primarily because of Miss Hewitt's report to the Administrator General of Jamaica, and each applicant acted within his or her governing law.

[54] She again emphasised that Miss Hewitt's report that her aunt, Mrs Steele, died without heirs triggered the need, as a matter of law, to have her estate dealt with as *bona vacantia*. This fact, she advised, was never refuted or challenged by Mr Coleman in any of his responses. She further submitted that with Mr Coleman's written request, the Administrator-General did all it could to petition for a waiver of the Crown's rights on his behalf, but it failed.

[55] At this juncture, the court finds it necessary to state that Mr Leveridge did not specifically respond to any of the above submissions. His submissions concentrated on the doctrine of adverse possession, which the court will address its mind later. Equally, there was no evidence in response to challenge the assertions of the applicants' affidavit in respect of their applications.

[56] Rule 26.3(1) of the CPR sets out the circumstances in which a court may strike out a statement of case. This rule states that:

"26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

*(a) **that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;***

(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c) ***that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;***

(d) *that the statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.
(My emphasis)*

[57] This court is mindful of the well-established guidance set out in the cases that striking out of a claim before it is heard on its merits should be a measure of last resort and should only be done by a court in the plainest and obvious cases (see **Three Rivers District Council and others v Governor and Company of the Bank of England (No. 3)** [2003] 2 AC 1 at page 77). Accordingly, given the measure sought by the applicants, the court must consider whether the pleadings demonstrate a reasonable basis for bringing the claim.

[58] Mr Coleman has contended that he has acquired a legal and beneficial interest in the subject property. This, he stated, was from 1972, after Miss Steele died. He contends that he was the adopted son of Mr and Mrs Steele, though the adoption was informal, and that he remained on the subject property after Mrs Steele's death up to this day. Mr Coleman has relied on the affidavits of Carey Watson and Claudette Gordon in support of this contention. Both affiants stated they knew no other persons to possess the subject property besides Mr Coleman.

[59] Mr Coleman also contended that he had paid all the property taxes up to 2011, when he was advised not to pay further taxes. He further argued that he has been in undisturbed possession of the subject property since 1972 and became entitled to it in 1984 by adverse possession.

[60] Counsel for Mr Coleman further contended that the Administrator-General had not challenged Mr Coleman's undisturbed possession of the subject property for over 12 years, and there was no attempt by the Administrator-General to dispossess him. Counsel relied on the case of **JA Pye (Oxford) Ltd and another v Graham and another (JA Pye v Graham)** [2002] 3 All ER 865

regarding what factors should be considered when determining a matter of adverse possession.

[61] In this regard, it was also submitted by Mr Leveridge that the applicants could not expect to benefit from the title to the subject property as Mr Coleman has been in free and open possession of the subject property and has remained in possession of the said property and has treated it as his own for over 12 years. Counsel maintained that the transfer of the title to the Commissioner of Lands should be cancelled and a new Certificate of Title should be issued to Mr Coleman, which, he argued, would be in keeping with section 158 of the **Registration of Titles Act**.

[62] In this regard, he relied on the authorities of **Thelma Jacas v Howard Jacas and others** [2017] JMSC Civ. 77 and the **Administrator General for Jamaica v Zena Holness [2022] JMSC Civ 39** and argued that the balance of convenience is in Mr Coleman's favour.

[63] Miss Lawrence refuted this and relied on sections 38 - 44 of the **Limitation of Actions Act**. She contended that concerning lands vested in the Crown, the limitation period is 60 years after the title accrued to the Crown. It was submitted that the subject property would have devolved on the Crown when Mrs Steele's estate was declared *bona vacantia*, and as such, the limitation period of 60 years would not have been met.

[64] Counsel further contended that Mr Coleman was permitted to remain on the subject property until his interest was determined. She pointed to the Administrator's application for a waiver based on his own request. She, accordingly, submitted that he could not, therefore, acquire an interest in the subject property, and further, he was fully aware of the status of the Administrator-General and could not have been in quiet and undisturbed possession.

[65] Sections 3 and 30 of the **Limitation of Actions Act** state that:

“3. 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 not have 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 getting the same.

...

30. At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”

[66] Accordingly, the first and essential hurdle for Mr Coleman is to prove that he has been in undisturbed possession for over 12 years (factual possession). Additionally, based on the principles established in the case of **JA Pye v Graham**, Mr Coleman would have to prove that he had the requisite intention to possess (“*animus possidendi*”). With respect to factual possession, the House of Lords in **JA Pye v Graham** stated, with approval, the following:

“[41] In [*Powell v McFarlane*] (1977) 38 P&CR 452 at 470 - 471 Slade J said:

‘(3) Factual possession signifies an appropriate degree of physical control. It must be a **single and [exclusive] possession**... what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.’

[42] ...it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an **intention to possess**. If a stranger enters onto land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long-term intention to acquire a title.”

[67] In considering the preceding, Mr Coleman’s pleadings do not reasonably suggest that he had the intention to possess the property and acknowledge it as his own. Firstly, he has failed to delineate a period within which he has been in exclusive possession. He, however, commenced his calculation in 1972. Secondly, I do not

find that it can be said that he was in exclusive possession, as it is unchallenged that two other persons were on the property, Miss Hewitt and Mr Astor Steele. Notwithstanding, I bear in mind that I must consider whether the statement of the case should be struck in keeping with the rules of this court governing an application to strike out.

- [68] The clear evidence is that the Administrator-General obtained Letters of Administration in 1974 after being named the legal representative of Mrs Steele's estate. In keeping with section 4 of the **Intestates' Estates and Property Charges Act**, Mrs Steele's estate was declared *bona vacantia* and accordingly devolved on the Crown. Mr Coleman has yet to refute this, except that in 1992 – 1993, some 20 years after the Administrator-General had obtained a grant of letters of administration, he asked his lawyer to obtain Letters of Administration. He has not provided the court with any documentary evidence to support this assertion.
- [69] Again, at the expense of further repetition, Mr Coleman has not denied that the Administrator-General became involved due to a formal report that Miss Steele died *bona vacantia*. In these circumstances, the Administrator-General must act when such a report is formally made. Furthermore, in this case, it is evident that the Administrator-General applied for and was granted Letters of Administration within two years following Miss Steele's death in 1972.
- [70] Sections 12 of the **Administrator-General's Act**, in summary, outlines the Administrator-General's entitlement to, and power to apply for, Letters of Administration to the estates of all persons who die intestate without leaving any eligible relatives or if no such relative takes out Letters of Administration within three months or such longer or shorter time as a judge before whom an application for administration was made may direct.
- [71] Section 13 of the **Administrator-General's Act** then goes on to say that in cases falling within section 12, it shall be lawful for the Administrator-General to

apply for Letters of Administration to any deceased person's estate within three months after the death of such person if it appears likely that no other person will take out Letters of Administration to such estate and that injury to the estate is likely to result from the delay in obtaining administration to the estate.

- [72] Sections 12 and 13 of the **Administrator-General's Act** authorise the Administrator-General to act as she did. Thus, her actions cannot be said improper or unlawful. In these circumstances, I do not accept that transferring the subject property to the Commissioner of Lands was improper.
- [73] Additionally, Mr Coleman had written to the Administrator-General seeking a waiver of the Crown's rights to Mrs Steele's estate. He has failed to refute, address or explain his letter sent to the Administrator-General in 1974 seeking a waiver of the Crown's rights.
- [74] Before the Administrator-General obtained Letters of Administration for Mrs Steele's estate, the evidence is that Mr Coleman wrote to the Administrator-General seeking moral consideration for his years of service to the deceased. The letter was devoid of any intention by him to obtain letters of administration and or that he did. In the court's view, guided by the applications before me, this lends itself to an interpretation that Mr Coleman accepted that the Administrator-General was in control of the estate, which would be contrary to his contention that he had demonstrated acts and intention to adversely possess the subject property since 1972.
- [75] Further, I must say that I am troubled by the deficiency of Mr Coleman's pleadings. Overall, the declarations sought by Mr Coleman in his fixed-date claim do not support or distinctly set out the evidence he advanced against each applicant. In my view, this is not only relevant but a necessary course to chart in the institution of a claim, and even more so, evidence should be advanced in his affidavit to refute their assertions.

- [76] Mr Coleman is seeking an order to be declared the beneficial owner of the property and is contending that he has a claim for adverse possession. He has yet to set out against which applicants he is seeking to advance that claim. Most pointedly, it could not be the Administrator-General; she has long dealt with the matter brought by Miss Hewitt in keeping with her statutory duties. The clear position is that she no longer possesses the property.
- [77] In this court's view, Mr Coleman must advance sufficient pleadings to ground his claim and state the cause of action he relies on against each. If the court were to attempt to ascertain the cause of action Mr Coleman is advancing, it would be engaging in unnecessary legal gymnastics. The onus, at this stage of the proceedings, is on Mr Coleman to outline his case. It would be inequitable for the court to lower this threshold requirement merely because the originating documents to the claim needed to have been better drafted.
- [78] More importantly, the pleading has not shown that he had been in open, quiet, and undisturbed possession of the subject property for at least 12 years after Mrs Steele's death or 60 years after the subject property would have devolved on the Crown *bona vacantia*. Neither is it demonstrated from the pleadings that he had the requisite intention to possess the subject property. I have found the pleadings lacking in the absence of an apparent cause of action. Mr Coleman must stand in his pleading regardless of its deficiency.
- [79] Concerning the Registrar of Titles, while the law clearly states that she can be sued in her capacity as Registrar of Titles, Mr Coleman's claim against the Registrar of Titles does not allege fraud.
- [80] I also agree with the Deputy Solicitor General, Miss White, that with respect to the Commissioner of Lands, not only was there no cause of action disclosed in the claim form, but the law also provides that the Commissioner of Lands cannot sue or be sued in her capacity as Commissioner of Lands.

[81] Therefore, I agree with the applicants that Mr Coleman's statement of case ought to be struck out as it discloses no reasonable grounds for bringing a claim against each of them.

Issue 2: Whether Mr Coleman's statement of case should be struck out against the 2nd – 4th applicants for failure to comply with Part 19 of the CPR.

[82] Mr Coleman has filed multiple revisions to his statement of case before and after the case management conference. As is evident, the original claim was filed on February 3, 2022, against the Administrator-General solely. This court keenly observed that the fixed date claim form only sought an injunction then, and no cause of action was stated or established. Later, an amended fixed date claim form was filed on April 2, 2022, which added the Registrar of Titles as the 2nd defendant and the Attorney-General as the 3rd defendant. Another amendment was made, and a further amended fixed-date claim form was filed on July 6, 2022, adding the Commissioner of Lands as the 4th Defendant.

[83] Miss White submitted that adding the 2nd – 4th applicants to the claim was in blatant breach of Part 19 of the CPR. After the case management conference, she submitted that a claimant should not add a new defendant to the proceedings without the court's permission. She further argued that Mr Coleman did not seek such permission from the court and that the 2nd – 4th applicants are not the proper parties to the claim.

[84] Miss White further argued that while the amended fixed-date claim form was served on the Director of State Proceedings, none of the other statements of the case were served. She further submitted that notwithstanding the amendment to the claim, which added the Commissioner of Lands as a defendant, neither the Director of State Proceedings nor the Commissioner of Lands was served.

[85] Rule 19.3(1) of the CPR states that the court may add, substitute or remove a party on or without an application. Rule 19.2(3) of the CPR outlines that:

“The court may add a new party to a proceeding without an application if -

- (a) It is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings or*
- (b) There is an issue involving the new party connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.”*

[86] It is to be noted that adding the 2nd – 4th applicants to the claim was not done by an order of the court. On a careful perusal of the CPR, it is clear that, after the case management conference, the court’s intervention should have been solicited to exercise the necessary discretion before the 2nd – 4th applicants were added as defendants to the claim.

[87] Upon reviewing the court’s records, I note that the first case management conference was set for March 7, 2022, and the 2nd – 4th applicants were all added after that date and without the court’s permission.

[88] I agree with Miss White that Mr Coleman’s addition of the 2nd—4th applicants as defendants to the claim without first obtaining the court’s permission is a clear breach of Part 19 of the CPR.

[89] Not only is it that Mr Coleman has failed to adhere to the rules of the court as contained in Part 19 of the CPR, but his counsel’s submissions have not disputed nor challenged this.

[90] When considered as a whole, I again am constrained to accept the applicants’ submissions that Mr Coleman’s statement of case should be struck out against the 2nd—4th applicants due to the failure to comply with Part 19 of the CPR.

Issue 3: Whether the interim injunction is to continue

[91] Given my findings above, the interim injunction will no longer be relevant. Accordingly, the order of this court is for it to be discontinued.

Disposition

[92] In the final disposition of this application, the orders of the court are as follows:

- (i) The Claim No. SU2022CV00354, filed on April 29, 2022, is struck out against the 1st Defendant/Applicant.
- (ii) The Matter against the 2nd, 3rd and 4th Defendants/Applicants is Struck Out.
- (iii) The Interim injunction granted on August 11, 2022, and extended on September 8, 2022, is removed or lifted in respect against the 2nd, 3rd and 4th Defendants.
- (iv) Leave to appeal is granted.
- (v) No order as to costs.
- (vi) The 1st Defendant/ Applicant's Attorney -at Law is to prepare and serve this Order.