[2016] JMSC CIVIL 2

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2013 HCV 03250**

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| **BETWEEN** | **MAGELEATHA LEANORA EDWARDS** | **1ST CLAIMANT** |
| | **ANDY GEORGE LOUIS ALEXANDER FRAY** | **2ND CLAIMANT** |
| | **PETER LESLIE FRAY** | **3RD CLAIMANT** |
| **AND** | **ANTHONY ST. ELMO FRAY** | **DEFENDANT** |

Land – Claim by Executor - Dual registration of title – Whether second registered title eclipses the first – Whether registration obtained by Fraud – Possessory Title – Limitation of Actions –Whether one party obtained a possessory title.

John Graham and Barbara Hines instructed by Barbara Hines & Associates for Claimants

Nadine Lawson for the Defendant.

**HEARD: 17TH, 26TH, 29TH, JUNE 2015; 22ND, 23RD JULY 2015; 24TH , 25TH NOVEMBER, 2015 AND 15TH JANUARY, 2016.**

**Coram: BATTS J.**

[1] This matter was listed before me for a trial in chambers. Having perused the pleadings and satisfied myself of the issues, I enquired of the attorneys the reasons for a hearing in Chambers. None was advanced and indeed the attorneys agreed that a trial in open court was appropriate. I therefore adjourned into open court and commenced the trial. The issues involved a determination

of legal and factual matters, were not of a matrimonial or private nature and were therefore to be decided by trial in open court.

[2] Ms. Lawson for the Defendant referenced an application filed on the 17th June, 2015 seeking –

a) Permission to file affidavits

b) A variation of the Orders made at Case Management

c) Relief from Sanctions

She admitted the Defence was not now ready to commence a trial.

[3] Mr. John Graham opposed the application. He alluded to one issue which he said no amount of adjournments could cure. This had to do with the dual registration of land. The Registrar of Titles had sent a representative, in response to a witness summons, who would show that at the time the Defendant applied for first registration of title there was already in existence a Registered Title for the said land. At this juncture the parties asked for the matter to be stood down until 2:30 p.m. for discussions.

[4] At 2:50 p.m. the trial resumed. The parties then agreed to the following order:

1. The Defendant does on or before the 30th June, 2015 deliver up to the Registrar of Titles the Duplicate Certificate of Title for all that parcel of land part of Worchester in the parish of St. James registered at Volume 1302 Folio 160 of the Register Book of Titles for the purpose of cancellation.

2. The matter is adjourned part heard to 9:30 a.m. on Friday 26th June, 2015 pending settlement.

3. The representatives of the Registrar of Titles are excused from attendance at court on that date.

[5] When the matter resumed on the 26th June 2015 I was advised that negotiations had broken down. The Claimant was ready to proceed with the trial. The Defendant's counsel applied for an adjournment to allow for time to file further affidavits and for compliance with case management orders. She explained that the reason for non-compliance was because of difficulties getting witnesses to come into Kingston. The Defence she advised has as yet filed no affidavits. I enquired of my clerk what would be the earliest available date for this trial and he said sometime in February 2017. At this juncture Claimant's counsel indicated that given the way the issues were now aligned he would waive the need for affidavits or witness statements if the Defendant was asked to give evidence first. This is because the question of the registered title being out of the way the real issue was now whether the Defendant could establish a possessory title. Defence Counsel agreed to this proposal and requested a 15 minutes conference with her client and witnesses.

[6] I therefore decided to commence the trial of the matter. The Defendant would begin and would be allowed to give evidence in chief orally.

[7] The Defendant Anthony St. Elmo Fray then gave oral evidence in chief. He resides at Johns Hall Worcester District St. James. The 17th July 2015 would he said, mark his 60th birthday. He said he had been living at that address since "around 1980" and he is an autobody repairman.

[8] Mr Stanley Fray was his father and had gone to England. He knew this because his mother told him so. He was 15 years old when he first made contact with his father and that was by letter. His father used to write to his mother and that's how he obtained his father's address. His father and himself exchanged letters until in or about the year 1980. His father told him about his brother Orville Fray. He eventually met Orville in Potosi St. James in or about 1972. His father was the one who told him about the land in Worchester. He discussed the land with his brother. Orville said he was going to farm one section and that he could farm another. The Defendant said he farmed plantain, banana, yam, cocoa,

pineapple, sugarcane all at one time. Orville planted the same things. He said he farmed for his own use and for his family. He was then living in John's Hall. There was no structure or building on the land when they started farming. He said he started farming in 1974. Orville also started at that time. He says he still farms the same section of the land today.

[9] He stated that Orville went to live on the land before he did, that was in or about 1979. Orville had started constructing a house in 1975 or 1976. The Defendant started constructing a house in 1978 and went to live on the land in 1980. He was sure it was in 1978 he started construction because he had made notes in a book. This was put in as exhibit I. He said Orville assisted with the construction of his house. His house was made of concrete. Both his father and Orville are now deceased. Orville died in 1985.

[10] The witness said that Orville's son Andy started to make a fuss after Orville died. Eventually the confrontation with Andy became physical. This was in or around 1989 or 1990. Andy complained about the goats he (the Defendant) was rearing. The police were called and "Andy chop me before the policeman." Thereafter he said Andy Fray started fencing the property. The fence separated his section.

[11] In 1996 the Defendant obtained a survey of the land. He had the whole property surveyed. He said he was the only one paying taxes on it. He then got a diagram and used it to apply for title. He states he was unaware of an existing title. He went to the titles office himself to make the application. He took the application form to the titles office and in 1997 received a title. The first time he became aware that another title was in existence was in 1999 and this by letter. (See **Exhibit 2** letter dated 14th December 1999).

[12] The witness said there were now three houses on his side of the land. A claim against him was only commenced in 2013. The witness was asked why did he apply for title for the whole land, and answered thus:

"I was preserving. I passed and my brother. I was only one paying tax but I get a title in my name. Did not have knowledge to cut of mine.

Q: you only claim part

A: just securing the land."

In answer to some questions about the fence, the witness stated that the fence fully enclosed his portion. The matter adjourned to the 29th June, 2015.

[13] When cross-examined the witness admitted that Meletta Scott was his mother. Further that his father's name was not on his birth certificate and was added by deed poll. An agreed Bundle of documents was put in as E**xhibit 3**. The witness denied asking his father permission to farm the land although he told his father he was doing so. He said he knew about the land because Orville told him about it. He admitted Orville was much older than he was and could have been 26 years older. The following important exchange took place.

"Q: As a 19 year old going to land your older brother you said nothing to him.
A: Not a matter of permission. I tell him I going to take piece of the land and farm.
W: Did he point out which piece you to take
A: Yes
Q: He point out where you to take
A: Yes
Q: during time you farming the land, when you started you paid no tax for the land.
A: No "

[14] The witness stated that when he decided to pay tax for the land he told Orville who said nothing. He said that he was of the view his father abandoned the land because he had left and gone to England. He said the area Orville pointed out for him to farm is about 74 feet by 180 feet. He had got no legal advice when he went to apply for the title. He insisted he was only trying to "secure" the land

when he applied for title. No notice was served on Andy Fray because he lived on the land and they were not neighbours.

[15] The witness was then taken though the documentation filed in support of his application for title ( see **Exhibit 3** pages 20 to 26). The witness stated that he did not know Richard Bonner attorney at law,and that he had asked his mother to sign the Declaration even though he knew she lived in Johns Hall and had left Worcester before he was born. He also had her sign a Declaration that his father had given him the land in 1976 when he knew it was untrue. He also had her sign that he was in "sole Possession" when he knew Miguel and Andy were also in possession. When asked why he had his mother sign to things he knew to be untrue the witness stated,

> "A: We was looking after the land so we just sign.
> Not really false."

[16] A similar process of cross-examination was done in respect of the other Declarant in support of the application for title, one Keith Fisher. He too was asked to sign a document which said that Stanley had given the land to the Defendant.

> "Q: why give [him] false document
> A: was not false just procedure to prepare"

[17] The witness also admitted that the value he stated in his Declaration being $100,000, was less than the true value of the land. He said when he said premises were "unoccupied" the insertion of "un" was by accident. Indeed when he signed it the "un" was not there he said. He was then asked why had he not written down Miguel and Andy's names on the form as persons in possession. His response:

> "Because you and a person is enemy that is why
> I did not consider them."

He admitted that Miguel and Andy had a right to be on the land.

[18] At the end of his evidence the Defendant applied for an adjournment and indicated a wish to amend the statement of case. The defence was now only seeking a part of the land, and not the whole. I acceded to the request and made the following order.

1. Adjournment granted to the 22nd and 23rd July 2015
2. Defendant to file and serve application to amend and witness statements on or before the 10th July, 2015.
3. Pre-trial hearing fixed for the 15th July, 2015 @ 9:30 a.m. to consider the applications.
4. Question of costs reserved
5. Claimant to prepare file and serve this Order.

[19] At the hearing in Chambers on the 15th July 2015 I heard submissions on the application to amend and allowed the amendments. I also gave permission to the Defendant to rely on three new witness statements. The Claimant was given permission to file an Amended Reply and Defence to counterclaim if so advised. Costs of the day and costs thrown away were for the Defendant's account in any event. I promised then to put my reasons in the final judgment. It appears to me that when regard is had to the evidence already given by the Defendant, it is necessary that the Statement of Case be amended for the real issues to be placed before the court. The Defendant is no longer seeking a possessory title for the entire land, only that portion he claims to have occupied. In a sense therefore it is not a new issue just a revision of the same question. Secondly there has been no demonstrable prejudice to the Claimant by the amendment. If anything it perhaps makes the Claimant's task easier, less land now being claimed.

[20] The trial therefore resumed on the 22nd July 2015. The Claimant was allowed to further cross-examine the Defendant consequent on the changes to the statment

of case and further witness statements. **Exhibit 4**, being a copy Title Vol. 612 Folio 81, was put in evidence.

[21] When cross-examined the Defendant admitted asking Mr Samuel Coote to give evidence and that they had been friends since school days. They had also done a trade together. The witness admitted that Andy and Miguel continued to farm after Orville died. In answer to questions from the court the witness stated that in or about the year 2000, he extended the fence Andy had constructed so that it went all the way back. However he admitted it did not go all the way to the boundary of his father's land.

[22] I have detailed the Defendant's evidence to demonstrate its contradictions. The Defendant admitted making false allegations and securing persons to make these allegations in support of his application for title. He admitted that he is not entitled to the entire land as he was only in possession of a part of it. In consequence his statement of case had to be amended. Furthermore the court has not received much assistance in the way of determining how much land he farmed or the identity of its boundary, save the reference to fencing which he said he extended but he gave no measurement of it.

[23] The witnesses for the Defendant did not do much to improve on this situation. The first one was Mr. Richard Samuel Coote. He was 63 years of age and a long-standing friend of the Defendant. His witness statement dated the 8th July 2015 stood as his evidence in chief. He said he has known the land in question for over 40 years. He first saw the Defendant on the land in 1974. He also saw Orville farm it. They also each built houses on the land. His evidence in chief does not assist much on the true issue in the case that is, the extent of land occupied by the Defendant. He stated,

> Para 21" I know Orville farmed the land up to his death. As the houses were at the front of the land, you couldn't see

clearly from the house who was farming where from the back part of the land. “

[24] Cross-examination underscored this inadequacy. In answer to questions from the court:

“Q: Did you examine the fence

A: No

Q: Are you in a position to say how far back the fence was

A: from road to where I saw fence about 5 chains

Q: did it go right back to end of the land.

A: No.”

I formed the view that this witness had never prior to attendance at court considered the length of the fence. His view from the road did not enable him to accurately answer its length. His evidence of “5 chains” was to my mind a guesstimate and unreliable.

[25] The other witness was Gerry Fray, he is the Defendant’s son. His witness statement dated 10th July, 2015 stood as his evidence in chief. He lived on the land until he left Jamaica in 2002. He said the Defendant’s portion of the land is “completely fence.” He also built a house on his father’s section of the land and a soak away pit 30 feet away. His credibility was impacted when he told the cross-examiner that he had not read the statement before signing it. The following exchange took place-

“Q: Why not read it all

A: Because my brother Fertuado tell me what going on with the case

Q: Why not read it all

A: Nothing.”

[26] The re examiner applied to have the witness read the statement. I allowed the witness to stand and read his statement out loud and then say whether its contents were true. The witness be it noted struggled to read the document. He had problems with the following words: “separating, erecting, lease, concrete,

construction, erected." In the end he said there was nothing he wished to change. I allowed further cross-examination having regard to the recent adoption of the statement by the witness. The witness at this juncture admitted that he had erected a fence in 2012 to the back of his house.

"Q: you built it in 2012 after you pass soak away pit or before

A: after you pass soakaway pit"

In answer to the court the witness was unable to say how far back or how long the fence extended.

[27] The Defendant's next witness was Andre Fray another son of the Defendant. His witness statement was also dated the 10th July 2015. He too states the land was "completely" fenced. His statement estimates the size of the portion occupied by the Defendant as more than ½ acre.

[28] When cross-examined he denied saying that the land was "completely" fenced. He was then shown paragraph 6 of his witness statement and admitted to reading it before he signed it. Interestingly, although living in Portmore at the time he recalls spending a week at the property in 2012. His brother Gerry was in Jamaica and was also there. Apart from going to the beach he did not recall Gerry doing anything in particular. He did not mention any fence being erected at that time. He too was unable to give the length of the fence. In questions arising from questions asked by the court the following exchange occurred:

"Q: you have never paid any special attention to the fence at back of your property.

A: No it was just there."

Surprisingly the witness said when saying land was "completely" fenced he was referencing the fence down the "middle." The Defendant closed his case on that note.

[29] It is fair to say that at the close of the Defendant's case there was an abundance of evidence that he had occupied a part of the land for in excess of 12 years. He

says he constructed houses, raised animals and planted crops on the land. There was however very little indication of the boundaries or extent of the land occupied.

[30] The 2nd Claimant was the only witness called by the Claimants. His evidence in chief was by way of affidavits dated 18th March 2015 and 20th July 2015. He states that Stanley Fray was his grandfather and bought the land in dispute in 1953. It consisted of 3 acres. Orville Fray was his father. The land was bequeathed by will to Orville. His father farmed the entirety of the land until in or about 1979. In that year his father also commenced construction of a house on the land. The Claimant says he started living on the land in 1979. He was then about 9 years old. Orville died in 1985. The Claimant and his mother who is the 1st Claimant have since then remained in open undisturbed possession of the land. He says that in about 1980 Orville gave the Defendant permission to live on the land and assisted the Defendant to build a house thereon. The Defendant moved onto the land in about 1982. The 2nd Claimant stated that he has never seen the Defendant farm any portion of the land. He said the "disturbance" commenced because the Defendant allowed his animals to destroy the Claimant's crops on the land. In the year 2000, he went to pay the property tax and noticed that the Defendant's name was on the roll. This resulted in further enquiry. The upshot was a letter from the Registrar of Titles advising that the title of Stanley Adolpus Fray was still intact (see letter dated 14th December 1999 with referenced enclosure page 7 E**xhibit 3**). This letter he said, reassured the family, and they saw no need then to take any action against the Defendant. In the year 2013 an attorney was retained to complete the probate of the estate Stanley Fray which had been languishing. The Registrar of Titles advised then that there had been dual registration of titles. A claim for recovery of possession was promptly filed. He says that his aunt Doreen Fray, the executor of Stanley Fray's estate, permitted the Defendant to remain in possession. He asserts that in 2012 the Defendant moved the fence and this sparked another dispute which resulted in the police being called.

[31] When cross-examined I perceived a ring of truth about his evidence. He for example, recalls going with his father to see the land for the first time because a pit was being constructed .This is just the kind of activity that would impact the memory of a young boy.He recalls the Defendant visiting his father and sitting on the verandah. He does not recall what they were talking about because "as kids we would be one side." Counsel sought to challenge the witnesses' use and understanding of certain terminology, however the challenge appears to end in the witnesses favour:

> "Q; what you understand by "licence"
> A: when you give someone permission to live. You not paying
> Q: was your father a licensee
> A: no ma'am"

[32] Cross-examination revealed that there was regular written communication between the 2nd Claimant and his aunt. He said she also sent him money which he used to pay the taxes among other things. The witness was asked whether he had the letters and answered in the affirmative. The court rose to allow for examination of them by the Defendant's attorneys. There was however, no agreement on the letters and Defendant's counsel asked that they be each marked for identity. The letters were however never put in evidence before me. The trial adjourned.

[33] When we resumed on the 24th November 2015 the cross-examination of Mr. Andy Fray the Claimant continued. **Exhibit 5** being a certified copy of the title registered at Volume 612 Folio 81 was admitted into evidence by consent. The witness stated he was Doreen Fray's agent and reported to her on happenings at the property. He even obtained permission to rent parts of the land. He does not regard himself as the owner, in his words:

> "I living there I monitor the property, I am not fully owner I have family who include. I protect and keep it up."

[34] The witness then stated that the Defendant has three houses on the land and that he occupies, “a house spot”. The following exchange occurred,

> “Q: what is the area where you say Defendant occupy a house spot
> A: At first, he occupied a house spot
> Q: define house spot
> A: about a square of land’
> Q: what is a square of land
> A: not good at measurement but about 40 feet
> Q: would it be like this court room or bigger
> A: Little bigger

[Both parties agreed the courtroom is 36 feet x 23 feet]

At this juncture and after an exchange between counsel, the Claimant’s counsel expressly stated that recovery of possession of the houses occupied by the Defendant was no longer being sought. The only issue for the court was how far back did the Defendant’s portion go.

[35] The cross-examiner turned her attention to the matter of the fence separating the Claimant’s and Defendant’s portions and how far back did it go.

> “Q: How far into property is the fence, does it go to end of property.
> A: No Miss
> Q: How far in
> A: I put up the fence and put it out back of Anthony house. All the rest of property was occupied by me. Anthony bad me up threaten me and make his was in some more of the property.
> Q: so the fence now extends beyond first and second house
> A: yes
> Q: beyond 3rd house

A: no

Q: is the low barbwire fence difficult to see that extends down into gully

A: yes in 2012 Anthony make that fence."

[36] The cross-examiner then asked the witness about a visit to the premises. The exchange is I think important,

"Q: Do you recall earlier this year when myself, Miss Hines and a surveyor came to property.

A: yes

Q: recall vegetable matter across spring

A: yes

Q: it was indicated it was leased

A: Don't know of that

Q: what was surveyor doing there

A: he came to survey the part Anthony agree on 30feet beyond the last house.

Q: did the surveyor also survey where wire fence and barbwire was

A: Yes

Q: That section you say Anthony fenced in 2012 did you ever farm it

A: yes

Q: when last you farm it

A: Up to 2012. I have fruit trees mango, star apple, banana and coconut.

Q: tomatoes grow there

A: to my knowledge in 2012 Anthony and his family came in cut down fruit trees and plant tomatoes.

Q; In 2012

A: yes Anthony let his ex-girlfriend do that"

[37] He was then asked whether he still lived on the property. His response was that in 2013 himself and his mother removed from the property out of fear for their lives. They were he said threatened by Anthony and his girlfriend and decided to remove until the "court case" was over. The witness described the most favourable area for farming as well as saying that Anthony had goats and grew coconut trees but did not farm. He explained that it was Anthony's goats that had damaged some of his crops. The cross-examination ended thus:

"Q: You went and farm on back step of his 3rd house.

A: all property was occupied by me and my mother and Anthony threaten my life and say me and children ca'an tell him what to do. So I don't want make no war so I leave him"

[38] The Claimants closed their case and called no other witness. It is fair to say that the Claimant's evidence had a ring of truth about it. It was also for the most part internally consistent. Some dates and events did not coincide with the documentation, however the witness was candid and direct when answering questions. In contrast the Defendant's evidence to my mind, was premised on what answer was most suited to a favourable result. When I consider also the Defendant's admitted allegations at deception with regard to the application for title, I have little difficulty in stating at this stage that the Claimant's evidence finds greater favour with me. Where the evidence of the Defendant is in conflict with that of the Claimant, I prefer the Claimant's evidence. I regard the 2nd Claimant as a truthful witness.

[39] The parties made extensive oral submissions before me on the 25th November 2015. I ruled that the Claimant's Counsel should go first. Mr. Graham's arguments may I think be summarised thus:

a. The burden of proof is on he who asserts. It was therefore for the Defendant to prove he has acquired a possessory title.

b. The Defendant has failed to prove a boundary line for that possessory title.

c. He referenced the Defendant's false declarations in relation to applications for title and his attempt to obtain title for all the land.

d. He referenced also that the claim originally stated that it was his father who gave him the land. However in evidence he admitted that he had never met his father and it was in fact his brother Orville who allowed him onto the land.

e. The Defendant's credibility ought therefore to be impugned and his evidence rejected.

f. There was physical contact between the parties that got the attention of the courts. The Defendant's "side" had a numerical superiority in these conflicts. It was therefore not surprising that the Claimant had withdrawn from the property in fear.

g. He examined the evidence of the Defendant and his witnesses as to the extent of land claimed by the Defendant and concluded:

> "if Defendant who needs to prove his case has called witnesses whose evidence is indecipherable and difficult to comprehend then it means burden not discharged."

h. Having reviewed the evidence on the size of land occupied Mr. Graham submitted as follows:

> "Our position is that even though we recognise there are differences in proof of Defendant's counter claim for the 30 feet up to where the soakaway is for reasons of family and harmony, so we accept that the land up to the point of soakaway pit is approximately 30 feet from the back of the 3rd house would be the appropriate distance for this matter."

[40] For her part the Defendant's Counsel made the following points:

a. The law allowed persons to defeat a registered title by taking possession and with continued use for the requisite period. This is not new and started with William the Conqueror who entered England and took land.

b. The Claimant now concedes that the Defendant is entitled to the portion occupied by his 3 houses.

c. The evidence of the Defendant supports his claim to a greater share. That evidence is: that he entered possession in 1974, himself and Orville farmed the land, Orville pointed out the house spot for the Defendant; since 1985 even if it is assumed Orville gave permission, it would have ended with his death in 1985;

d. The evidence as to extent of land occupied by Defendant varied. One witness said it was more than ½ acre. One witness compared it to a football field.

e. Counsel admitted that the burden of proof on this question of the extent of land was on her client.

f. The Defendant's land she submitted goes back to the gully.

g. As regards the false declarations by the Defendant she asked the court to bear in mind that he had been forthright in saying what he had done and the reason for doing it.

h. She suggested that the Claimant had been disingenuous because in earlier affidavits he contended that he was in sole possession of the entire three acres.

[41] At the close of submissions I adjourned to consider my decision and fixed the 15th January 2016 as the date for delivery of the judgment.

[42] I have carefully considered the evidence documentary and oral. I agree as is conceded by counsel, that it is the Defendant who must discharge the evidential

burden to establish the possessory title claimed. In this regard even if one were to accept the evidence posited as truthful it is far from clear or satisfactory as to the dimensions of the property claimed. As indicated earlier the Defendant's evidence is not preferred. It has been discredited and I was not impressed by his demeanour in the witness box. The notebook **Exhibit 1** on which he relied for support proves the purchase of construction material for the period 1978 to 1996. There is no indication of whose house or where it was being built. In any event it is conceded that the Defendant built houses on the land. The documentation does not assist in the resolution of the crucial issue.

[43] The Defendant's counsel's effort to discredit the Claimant's evidence was not particularly successful. Indeed her suggestion that the Claimant in earlier affidavits denied that the Defendant was in possession of any part of the land is to my mind inaccurate. In fact the Claimant stated quite clearly that his father assisted to build a house for the Defendant on the land and there was clear reference to the fact that the Defendant commenced living there in 1982. Read as a whole it cannot be said the Claimant's affidavit concealed the fact of the Defendant's possession of some part of the land.

[44] There is on the evidence little doubt that the Defendant has been in possession of some part of the land for in excess of 12 years. Further, that he had done so with the necessary intent. His older brother Orville when pointing out the "house spot" to him was granting permission, not merely as licensee, but in the knowledge and expectation that he would live there and make it his home. He built two further houses clearly exercising dominion if not dominance. The Claimant has conceded as much.

[45] The sole issue for my determination therefore is the extent of land so occupied and therefore for which a possessory title may be successfully claimed by the Defendant. In this regard, I do not accept that the Defendant did much farming.

It is not only that I disbelieve him and reject his evidence whenever it conflicts with the Claimant's and this for reasons I have already stated. It seems to me that his goat rearing without appropriate fencing or tethering, is inconsistent with the type of farming he described. The damage to the Claimant's crops, and this is common ground, was the source of the first major physical conflict and ended up in the Resident Magistrate's Court. One does not allow goat, sheep or cattle to roam where one has planted such crops. I find that event therefore to be supportive or corroborative of the Claimant's account that the Defendant had no significant part of the land under cultivation. I find that in 2012, the fence was extended at the expense of the Defendant's son and this was done in an effort to "capture" further land. I find that the Defendant is entitled to 3 house spots and their curtilage. The concession by the Claimant that this extends to 30 feet beyond the 3rd house is I think well made and most appropriate.

[46] In closing let, me express my gratitude to all Counsel involved in this matter. Trial dates must be respected and the Court's Orders for filing of witness statements must be obeyed. It can do no one, least of all litigants, any good for trial dates to be adjourned where to do so means a new date some two years hence. It is for this reason that I endeavoured to maintain the trial date and facilitate the very late filings. It is I believe, equally unjust to enter judgment without trial except in the most extreme circumstance and where the breach is contumelious and the litigant somewhat complicit.

[47] My decision in this matter, and I incorporate the earlier consent aspect, is as follows:

1. By consent the Defendant does on or before the 30th June 2015 deliver up to the Registrar of Titles the Duplicate Certificate of Title for all that parcel of land part of Worcester in the parish of St. James registered at Volume 1302 Folio 160 of the Register Book of Titles for the purpose of cancellation.

2. It is Declared that the Defendant is and has been for a period in excess of 12 years in open continuous and exclusive possession of part of land registered at Volume 612 Folio 81 of the Register Book of Titles being that part of the land on which his three houses have been constructed and extending to the rear of the last of the three houses in the vicinity of where the pit is located, being approximately 30 feet beyond the rear of the third house but no further.

3. It is further Declared that the Defendant is the owner and entitled to a possessory title of that parcel of land described in Paragraph 2 above.

4. The Question of cost is reserved for determination after submissions are made in chambers at a later date.

**David Batts**
**Puisne Judge**