[2025] JMSC Civ 75

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

CLAIM NO. SU2023ES00027

IN THE MATTER OF the Estate of Carol Manley Lawton, Deceased, Intestate

AND

IN THE MATTER OF an Application to remove and replace personal representative

BETWEEN	**KARL LAWTON**	**1ST CLAIMANT**
AND	**CAROL LAWTON**	**2ND CLAIMANT**
AND	**DIONNE LAWTON**	**3RD CLAIMANT**
AND	**CAROLYN LAWTON**	**4TH CLAIMANT**
AND	**EDITH EDWARDS LAWTON (Administratrix of the Estate of Carol Manley Lawton)**	**DEFENDANT**

IN CHAMBERS VIA VIDEO CONFERENCE

Mr. Jerome Spencer appeared for the Claimants

Ms. Cheffanie West and Ms. Denise Christie instructed by 876 Legal Suites appeared for the Defendant

Heard: 31st March and 6th June 2025

Civil Procedure – Summary Judgment – Adverse Possession Claim – Is this an appropriate case to deal with summarily – Whether section 30 of the Limitation of Actions Act must be specifically pleaded – Are the proper parties before the Court – Limitation of Actions Act sections 3, 14 and 30 – Civil Procedure Rules 19.3, 26.9, 27 and 67.2

CORAM: A. MARTIN- SWABY J (Ag.)

[1] I delivered this judgment orally on the 6th day of June 2025, in relation to a summary judgment application brought by the Defendant. At that time, I gave an undertaking to provide written reasons. I do so now.

[2] Having carefully considered the Affidavits together with the written and oral submissions, the Court is constrained to refuse the Orders sought in the Amended Notice of Application for Court Orders filed on the 2nd day of July, 2024 ("the Application"). The remainder of this judgment will explain how I have arrived at this decision.

[3] Before addressing the specific issues raised in the Application, it is appropriate to first outline the background to the substantive claim from which the Application arises.

BACKGROUND

[4] Carol Lawton Snr. died intestate on the 13th day of March 2016. On the 8th day of February, 2022, a Grant of Administration in his Estate was issued by this Court to the Defendant, his widow. The Claimants are the children of Carol Lawton Snr., the deceased. By Fixed Date Claim Form (as amended) filed on the 26th day of January 2023, the Claimants commenced a claim against the Defendant in her representational capacity as the Administrator of Carol Lawton Snr's Estate ("the Estate").

[5] The Claimants seek her removal as Administrator for the Estate as well as declarations that they have a beneficial interest in two (2) properties. The two (2) properties, which I shall hereinafter refer to as "the properties", were owned jointly as between their deceased father and the Defendant. However, they claim that the Defendant has been dispossessed of such title in the properties through an abandonment of her interest in the properties.

[6] The Claimants argue that their deceased father was separated from the Defendant since on or about the year 1996. This is disputed by the Defendant. The latter claim that it was on or about the year 2007 that the parties separated. The Claimants aver that the Defendant's title in these properties have been extinguished pursuant to section 30 of the Limitation of Actions Act. The Claimants assert that their deceased father was in open and undisturbed possession of the properties for more than twelve (12) years to the exclusion of the Defendant. Consequently, upon his death, his interest in those properties passed to the Estate.

[7] The Fixed Date Claim Form mentions a third property. However, the Claimants concede that this property does not properly form part of the Estate and neither is it registered in the name of the Defendant.

THE APPLICATION

[8] The Defendant has filed an Amended Notice of Application for Court Orders on the 2nd day of July, 2024 asking this Court to consider and determine the claim summarily at the first hearing of the Fixed Date Claim Form. The Defendant also seeks, inter alia, an order that there be judgment in their favour. The Defendant asserts that the Claimants have not specifically pleaded the Statute of Limitations and further that the nature of this claim is such that it can be dealt with summarily.

[9] The Claimants are opposed to this application for several reasons. To put it simply, they argue that there are serious issues to be tried and that the documentary evidence which has been placed before the Court is incapable of settling the matter unequivocally at this stage.

ISSUES

[10] I bear in mind that the substantive claim consists of two (2) main pillars. Firstly, the Claimants seek the removal and replacement of the Defendant as the

Administrator in the Estate. Secondly, they seek declarations that the Defendant has been dispossessed of her interest in the properties. Consequent on this, the issues to be dealt with are as follows:

i. Is this an appropriate case to be determined summarily?

ii. Whether the Statute of Limitations must be specifically pleaded?

SUBMISSIONS

[11] In seeking to resolve these issues, I wish to summarize the arguments of the parties. It must be noted that only the salient features of the arguments have been highlighted. However, I considered the arguments and material placed before the Court in its entirety.

The Applicant's / Defendant's Submissions

[12] The Defendant argued that the case at bar is similar to the facts in the case of **Tewani Limited v Div Deep Limited & Ors** (unreported), Supreme Court, Jamaica, Claim No. 2007HCV01056 delivered 20 October 2010 ("**Tewani**") which was upheld on appeal (Court of Appeal Judgment: **Div Deep Limited & Ors v Tewani Limited** [2011] JMCA Civ 25 ("**Tewani 2**")). Counsel, Ms. Christie indicated that in the case of **Tewani**, Beswick J reasoned that a summary approach could be taken in a claim of this nature where there is no reasonable defence to the claim.

[13] In seeking to assert similarities between **Tewani** and the case at bar**,** Ms. Christie invited the Court to consider the facts in that case. In **Tewani**, the dispute concerned a property which was sold by auction to the Claimant by the National Commercial Bank (mortgagor). The Defendants claimed that they had bought the property from the previous owners and were in possession of the property. They filed an ancillary claim seeking a rescission of the transfer of land. The Claimant filed a Notice of Application for Court Orders seeking summary judgment. In applying section 71 of the Registration of Titles Act, Beswick J granted summary judgment. She reasoned as follows at paragraph 15:

> *"…The law as I understand it, is quite clear as it concerns the effect of registered proprietorship of land. It does not brook credible argument. The registered title can only be defeated by fraud. As there is no proof of fraud here, it cannot be defeated even if the purchaser were aware of another interest being claimed. In the circumstances therefore the claim can be dealt with summarily."*

[14] The Court of Appeal, in **Tewani 2**, in dismissing the appeal brought against the ruling in **Tewani**, reasoned that the judge's finding that the sale was done under the "unfettered mortgagee power of sale" was correct.

[15] In applying **Tewani** to the present case, Ms. Christie asserted that the name of the Applicant being endorsed on the title as joint tenant and the death of Mr. Carol Manley Lawton Snr. being registered on the title settles the matter. As such there can be no reasonable claim advanced by the Claimants. On this basis, Counsel invited the Court to adopt a similar approach to **Tewani** to the case at bar.

[16] Ms. Christie also invited the Court to consider the decision of Sykes J (as he then was) in the case of **Lois Hawkins (Administrator of the Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McInnis** [2016] JMSC Civ 14 ("**Hawkins v Hawkins McInnis**"), where the learned Judge summarised the key considerations to be borne in mind concerning the extinguishing of another's title by way of adverse possession. She invited this Court to find that those key considerations when applied to the case at bar result in the Claimant's claim being void of merit.

[17] Counsel argued that the Claimants have failed to specifically plead section 30 of the Limitation of Actions Act and as such they have not properly pleaded a case of adverse possession. Counsel also raised a procedural issue. She asserts that the Claimant has brought the claim in their personal capacity seeking orders that their father dispossessed the Defendant and as such they derive an interest in the properties consequent on their standing as beneficiaries in the Estate.

Counsel argues that the Claimants should seek a limited grant to bring a claim of dispossession on behalf of the Estate.

[18] Counsel takes issue with Defendant being sued only in a representative capacity as Administrator in the Estate of Carol Lawton Snr and not in her personal capacity. Counsel argues that this creates a procedural irregularity. She invited the Court to consider the Privy Council decision of **Hayim v Citibank** [1987] AC 730 at 747 and 748 in support of this argument.

[19] Ms. Christie further argued that the Claimants have not established the necessary elements of adverse possession. In support of this argument, Counsel invited the Court to consider **Hawkins v Hawkins McInnis** and outlined the actions taken by the Defendant in travelling to the jurisdiction and transmitting monies which the Defendant asserts were for the maintenance of the properties. Counsel went through the documentary evidence in this case and submitted on the significance of each in resolving the issue of non-adverse possession. I will treat with these authorities further in this decision as counsel for the Defendant also relied on these authorities.

[20] On the issue of the removal of the Defendant as administrator, Ms. Christie accepted that by virtue of section 9 of the Trustees, Attorneys and Executors (Accounts and General) Act, an Administrator may retire or be released from their office, subject to leave from the Court, counsel argues that there is no basis for doing so in this case. Counsel argues that the assertions made by the Claimants are unsupported by the evidence. Counsel then argues that the Defendant's position is that she has been prevented by the Claimants from discharging the functions of her office.

The Respondents' / Claimants' Submission

[21] Mr. Spencer commenced his response by inviting the Court to consider that the documentary evidence which has been placed before the Court is incapable of

settling the matter unequivocally. Counsel urged that the documents which evidence the payment of the taxes on the properties indicate that these payments were all made between September 2020 to September 2023, approximately 4 years after the death of Carol Lawton Snr.

[22] Mr. Spencer urged that the case for the Claimants is that the starting date when the deceased commenced his adverse possession is the year 1996 whereas the Defendant argues that it is on or around 2007. However, the document which the Defendant relies and which is exhibited as EHL4 to the Defendant's Affidavit in Support of her Application filed on the 13th day of March 2024 does not give a date of separation but a time period where it states "four years or more" [prior to the year 2011 for context]. Mr. Spencer argues that whichever date is used 1996 or 2007, the time period will exceed that which is allowed under the Limitation of Actions Act and therefore this matter should not be dealt with summarily granting judgment in favour of the Defendant.

[23] Mr. Spencer indicates that it is the Claimants' case, based on instructions, that the payments made towards the property tax were done to revive an already extinguished interest in both properties and his clients are entitled to confront the Defendant on these matters through cross examination.

[24] Mr. Spencer also averred that the Western Union receipts which were also submitted as evidence of payments towards the properties were not addressed to the deceased but to one of the Claimants in this case. Counsel made the point that the Court is unable to look at these receipts to determine the purpose for which they were made. He argued that the mechanism of cross examination is the appropriate forum through which any findings of facts should be made as regards the purpose of these receipts.

[25] Mr. Spencer further argued that the issue of whether Carol Lawton Snr. occupied the properties exclusively from the year 1996 cannot be determined solely on affidavit evidence but must be ventilated in the context of a trial.

[26] On the issue of the Claimants seeking to obtain a limited grant, Mr. Spencer argues that this argument is misconceived as a limited grant is only issued where there is no pre-existing grant of representation. The Defendant, being the Administratrix appointed in the Estate, prevents the Court issuing a limited grant in these circumstances.

[27] Mr. Spencer contended that the cases relied on by the Defendant as a basis for pursuing summary judgment **Hawkins v Hawkins McInnis** and **Carol Lawrence v Andrea Mahfood** [2010] JMCA Civ 38 were matters wherein the issue of dispossession and severance of joint tenancy were ventilated through a trial. He further contended that contrary to the view of the Defendant, the Claimants specifically refer to section 30 of the Limitations Act. Further, that the Fixed Date Claim Form sets out the grounds on which the claim is being pursued in some detail. For these reasons, the Defendant cannot be in doubt as to the basis of the Claim. There is therefore no merit in the assertion that the Defendant is not aware of the full nature of the claim.

[28] Mr. Spencer asserted that having regard to the nature of the claim and the averments of both parties, this is not a matter which can be determined summarily on Affidavit evidence only. The issues raised by both parties must be explored at trial.

LAW & ANALYSIS

Is this an appropriate matter for summary judgment?

[29] The case law in relation to a summary judgment application was appropriately summarised by Master C. Thomas in **Simone Brown v Oldrian Ottley** [2023] JMSC Civ 85 at paragraph 9 of the judgment. It says as follows:

…

i) *The case must be more than just arguable; however, it does not require a party to convince the court that his case must succeed (**International Finance Corporation v Utexafrica SPRL** [2001] EWHC 508, relied on by Simmons J (as she was then) in **Cecelia Laird v Ayana Critchlow & Another** [2012] JMSC Civ 157).*

ii) *The burden of proof is on the applicant to prove that the other party's case has no real prospect of success (**Island Car Rentals v Lindo** [2015] JMCA App 2).*

iii) *Where the applicant establishes a prima facie case against the respondent, there is an evidential burden on the respondent to show a case answering that which has been advanced by the applicant. A respondent who shows a prima facie case in answer should ordinarily be allowed to take the matter to trial (Blackstone's Civil Commentary 2015, para 34.11).*

iv) *The court will be guided by the pleadings as well as the evidence filed in support of the application (**Sagicor Bank v Taylor Wright**).*

v) *The court must exercise caution in granting summary in certain cases, particularly where there are conflicts of facts on relevant issues which have to be resolved before a judgment can be given (**Doncaster v Bolton Pharmaceutical Co Ltd** [2006] EWCA Civ 1661; Cecilia Laird).*

[30] Rule 27.2(8) of the Civil Procedure Rules ("CPR") enables the Court to treat the first hearing of a Fixed Date Claim Form as the trial of the claim if the Court considers that the claim can be dealt with summarily. Therefore, in the case at bar, the rules permit a summary determination being made in this claim, notwithstanding that it has commenced by way of a Fixed Date Claim Form, where the Court considers that the claim is of such a nature that it can be determined in that manner.

[31] I have given careful thought to counsel's invitation to apply the case of **Tewani**. However, I cannot agree that the facts are similar or that the principles applied in that case are transferrable to the case at bar. Firstly, **Tewani** concerned a claim for possession and mesne profit. The dispute concerned a property which was sold by auction to the Claimant by the National Commercial Bank (mortgagor). The Defendants claimed that they had bought the property from the previous

owners and were in possession of the property. The Claim before this Court is a Probate Claim and one where the challenge to the title is that the Defendant was dispossessed by the deceased by virtue of the Statute of Limitations. It must be stated that the Court of Appeal in **Tewani 2** was careful to point out in dismissing the appeal that the sale in that case was done under the "unfettered mortgagee power of sale". **Tewani** is therefore entirely distinguishable from the case at bar which deals with the principles governing adverse possession.

[32] I have also sought to examine the cases of **Wills v Wills** [2003] UKPC 84, and **Winnifred Fulwood v Paulette Curchar** [2015] JMCA Civ 37 ("**Fulwood v Curchar**"). In so doing, I find that these principles which have been summarized by Skyes J (as he then was) in **Hawkins v Hawkins McInnis** are applicable to the case at bar.

[33] As such, where the property is jointly owned under a joint tenancy and one joint tenant dies, the normal rule of survivorship would apply and the co-owner takes the whole. Therefore, the Defendant is correct that the rule of survivorship would ordinarily apply where the co-owner dies. However, this is not the end of the matter. Rather, this is a prima facie position which can be displaced by evidentiary material. This is evident from the approach taken in **Wills v Wills** and affirmed and applied consistently in **Fulwood v Curchar** and **Hawkins v Hawkins McInnis**.

[34] The law is such that the registered owner of property can be dispossessed by another including a co-owner of the said property. Therefore, the Defendant's name being registered on the Duplicate Certificates of Title in relation to the properties is not conclusive evidence of her interest in the properties.

[35] In this case, the Claimants assert that the Defendant has been dispossessed. The law allows a party to bring such a claim against a registered owner. The

issue is whether the Court can determine the issue of dispossession solely in reliance on the documentary evidence without embarking on a trial.

[36] In seeking to resolve this issue, I bear in mind that sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing any action to recover property after 12 years if certain circumstances exist. I am of the view that one such circumstance is where the court makes a finding that the registered owner abandoned their interest in the property. In this case, this is a critical aspect of the Claimants' claim. I have considered whether I can make a finding, at this stage, on the issue of abandonment of interest solely on the documentary evidence.

[37] It is trite law that summary judgment is reserved for clear and obvious cases where the facts are not disputed. It is not meant to dispense with a matter where there are issues which must be explored at trial; its object is not to conduct a mini trial (see: **Swain v Hillman** [2001] 1 All ER 91). With this in mind, I am of the view that I cannot make a finding on this issue without the parties and their witnesses being heard at trial. This is a central, factual, and legal issue in dispute. The evidence that is currently before the Court does not clearly establish whether the Defendant was, or was not, dispossessed of her interest in the properties.

[38] On the issue of the Defendant's name being endorsed on the title and the death of Mr. Lawton being noted thereon, I bear in mind that section 14 of the Limitation of Actions Act makes clear that where persons hold property as co-tenants, each person's possession is treated as distinct from the other's from the very outset of the joint tenancy. This means that one co-tenant can, through continuous and exclusive possession over time, obtain the whole title and extinguishing the legal interest of the other co-tenant. Therefore, the possession of Carol Lawton Snr and the Defendant are regarded as separate from the inception of the joint tenancy.

[39] I am further guided by sections 3, 14 and 30 of the Limitation of Actions Act which establishes that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession. This is precisely the claim which has been advanced by the Claimants. Therefore, notwithstanding that the death of Carol Lawton Snr. is noted on the Duplicate Certificates of Title and that the Defendant is named as a joint tenant, these facts are not, in and of themselves, conclusive of the matter. The issues raised are triable issues which should be determined through the examination and cross examination of the parties.

[40] In conclusion, I find that the issue of whether the Defendant was in fact dispossessed is a live issue and cannot be determined on paper without a trial. I agree with Mr. Spencer that similar issues were fully ventilated and ultimately determined in the cases of **Wills v Wills**, **Fulwood v Curchar** and **Hawkins v Hawkins McInnis** after a trial was conducted. This reinforces my view that the matter before this Court is not suitable for summary determination.

[41] I hasten to add that the finding that the issue of dispossession is a live issue means that the Claimant has established a prima facie case which is more than merely arguable thereby necessitating the matter proceeding to trial.

Whether the section 30 of the Limitation of Actions Act must be specifically pleaded?

[42] I wish to now address an important issue raised by the Defendant. Do the Claimants have to specifically plead section 30 of the Limitations of Actions Act? On this issue, the Court considered the House of Lords decision in **Dawkins v Penrhyn** [1874-80] All ER Rep Ext 1668 which was also referred to in the Court of Appeal decision of **Fulwood v Curchar**. The Court understands that the

principle emanating from those cases are that claims which concerns the statute of limitations must be distinguished from others which involve fraud. The latter must be specifically pleaded whereas the statute of limitations need not be specifically pleaded.

[43] In relation to the peculiar nature of the statute of limitations, the Court does not believe that it must be specifically pleaded. Even if the Court is incorrect in its conclusion, the Claimants have asserted that they are in possession of the properties and have also stated within their claim that it is brought based on section 30 of the Limitations of Actions Act. The Court is satisfied this is sufficient for the pleadings and enables the Defendant to know the case which they must meet.

Who are the proper parties for the Claim?

[44] This is an issue which I believe arose ex improviso in the hearing of the application. It was not explicitly indicated as a ground upon which summary judgment was sought but was mentioned in the submissions of Counsel for the Defendant as a reason why the matter should be dealt with summarily.

[45] Ms. Christie has submitted that the beneficiaries are unable to bring a claim on behalf of the Estate in their personal capacity. She also indicated that the Defendant cannot be sued in her capacity as personal representative for the Estate for adverse possession of the properties, she would need to be sued in her personal capacity as the legal registered owner of the properties. Counsel is essentially saying then that the proper parties are not before the Court.

[46] Mr. Spencer however submits that the Claimants have the necessary standing as beneficiaries to the Estate to bring this action. Further, that a full grant has been given in the Estate and the CPR does not permit a limited grant to be given in circumstances where a full grant was already obtained.

[47] I must state at the outset that this issue is not a suitable basis for determining the claim by way of summary judgment. Nonetheless, the issue is significant and merits some consideration. I must clarify as well, before I delve into the nuances of this issue, that the manner in which the substantive claim is brought and based on the CPR, the Claimants would not be able to get a limited grant to bring the claim as there is a full grant already issued to the Defendant. Limited grants are only given in an estate in the absence of a full grant in that estate.

[48] The general rule that only the personal representative of an estate has standing to commence proceedings on behalf of that estate is well established. In the case of **Hayim v Citibank** the Privy Council examined the exception to this general rule known as the Vandepitte exception. The Privy Council found that under this exception the beneficiaries may bring an action in special circumstances such as breach of trust or conflict of interest on the part of the trustee but only if the trustee is joined or before the court. Lord Templeman opined at 747C-D and 748F-G as follows:

> *"… when a trustee commits a breach of trust or is involved in a conflict of interest and duty or in other exceptional circumstances a beneficiary may be allowed to sue a third party in the place of the trustee. But a beneficiary allowed to take proceedings cannot be in a better position than a trustee carrying out his duties in a proper manner…*
>
> *… a beneficiary has no cause of action against a third party save in special circumstances which embrace a failure, excusable or inexcusable, by the trustees in the performance of the duty owed by the trustees to the beneficiary to protect the trust estate or to protect the interests of the beneficiary in the trust estate".*

[49] As for the rationale behind the requirement of joinder of the trustee, the learned authors in **Lewin on Trusts** (20th Ed., Vol. 2) at paragraph 47-012 explain:

> *"Where a beneficiary brings a derivative action in his own name, then the trustees must be joined as defendants. The need for joinder of the trustees is not merely a procedural matter, nor merely to ensure that the trustees are bound by the judgment or to avoid multiplicity of actions. The need for joinder has a substantive basis since the beneficiary has a personal right to sue and is suing on behalf of the estate, or more accurately the trustee".*

[50] The Court notes that the Claimants bring this action for adverse possession in relation to properties allegedly possessed by their deceased father. However, they do so without having obtained a legal grant of representation. That function rests with the Defendant, to whom a full grant of administration has been issued. This raises a fundamental question of standing.

[51] Importantly, the claim is not against a third party but against the Defendant herself, who is the registered owner of the properties, a beneficiary under the Estate and the personal representative of the Estate. If the alleged adverse possession is proven, any resulting title would vest in the Estate.

[52] A dilemma arises, therefore, where, as here, the same person expected to advance the Estate's interest is also the one whose title is being challenged. The Defendant cannot be expected to sue herself. This inherent conflict of interest raises legitimate concerns about whether the Estate's interests will be adequately protected. This is the precise mischief addressed by the Vandepitte exception, as outlined by the Privy Council in **Hayim v Citibank**. Applying these principles, the Court finds that the Defendant's role, as both administrator and titleholder, creates an irreconcilable conflict. In the circumstances therefore, the Claimants are entitled to pursue the claim, on the condition that the Defendant is properly joined in her representative capacity as a defendant, an element that has already been satisfied on the present pleadings.

[53] It is to be noted, however, that the Defendant has not been joined in her personal capacity. The Defendant has properly drawn attention to the significance of this distinction, particularly in the context of a claim grounded in adverse possession and the Defendant's role as the legal title holder of the properties. This omission, though procedurally irregular, is not, in my view, at this stage, fatal to the continuation of the proceedings. It is not an issue which warrants the Court to dispose of the matter summarily. Moreover, the issue remains one that may be rectified or addressed by the parties as the matter progresses through the ordinary course of litigation. I say no more on the point at this juncture, so as to

avoid prejudging issues which may properly arise for determination at a later stage.

[54] Further, I note that there is no requirement under the CPR or at common law for beneficiaries, when proceeding in this manner, to first obtain the Court's permission or leave to initiate proceedings on behalf of the estate to which they are a beneficiary.

CONCLUSION

[55] In view of the Court's findings in its discussion of the matter, Order 1 as sought in the Amended Notice of Application for Court Orders filed on the 2nd day of July 2024 must be refused. The legal consequence of this is that Order 2 must also be refused as that Order is contingent upon Order 1 being granted.

ORDERS

[56] In final disposition of this Application, the following orders are made:

1. Orders 1 and 2 as sought in the Amended Notice of Application for Court Orders filed on the 2nd day of July, 2024 are refused.
2. Costs are awarded to the Claimants to be taxed if not agreed.
3. The Applicant's Attorney-at-law is to prepare, file and serve this Order.

Sgd. A. Martin-Swaby
Puisne Judge (Ag)