[2025] JMSC Civ. 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO.2013 HCV02259

BETWEEN	**EVON C.A. BENNETT**	**CLAIMANT**
AND	**RAYMOND RAMDATT**	**DEFENDANT**

Ms. Lisamae Gordon and Tamela Johnson instructed by Kelesha Rhoden & Co. for the claimant

Miss Jamila Maitland instructed by Campbell McDermott for the defendant

Heard: March 20, 2023, March 21, 2023, March 22, 2023, March 24, 2023, May 5, 2023, and February 12, 2025

Adverse possession – claimant claiming possessory title in his own right and through his deceased father - whether registered proprietor was in possession – whether the defendant dispossessed the registered proprietor

IN CHAMBERS

CORAM: JARRETT, J

Introduction

[1] The fixed date claim form before the court has had a long history. It was filed on April 15, 2013, and concerns land part of Longwood in the Parish of St Elizabeth registered at volume 971 folio 554 of the Register Book of Titles ('the property').

Among the orders sought by Evon Bennett ('the claimant') is a declaration that he is the fee simple owner of the property. Raymond Ramdatt ('the defendant') has an application before the Registrar of Titles, for adverse possession of a portion of the property, pursuant to section 85 of the Registration of Titles Act (ROTA).

[2] The claim first went to trial on November 9, 2016, at which time, the claimant's statement of case was struck out by Wint-Blair J (Ag) (as she then was), on the basis that there were no reasonable grounds to bring the claim, and that the claimant lacked the requisite locus standi, as his father, Keith Bennett, the registered proprietor for the property had died, and his estate unadministered. On a successful appeal of that decision, the court of appeal in **Evon C. A. Bennett v Raymond Ramdatt [2022] JMCA Civ 16**, determined, among other things on April 29, 2022, that the claimant is claiming a possessory title superior to that of the defendant, on the basis that he is in possession of the property in his own right as well as through his father whom he alleges was in possession up to the time of his death.

[3] The court of appeal also said that the claimant is claiming a possessory title, superior to that of the defendant, and that the issue in the claim is whether it is the claimant's father and not the defendant, who was in fact the person in possession. It said that if there is such a finding, a further finding that the claimant has the superior title ought to follow.[1] The court of appeal also determined that because the claimant's claim is based on possession, he was not required to obtain a grant of administration prior to bringing it. The point was made that a claim for adverse possession cannot succeed against a person with a superior title or a person claiming through someone with a superior title.

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[1] See paragraph 57 **Evon C A Bennett v Raymond Ramdatt [2022] JMCA Civ 16**.

[4] A determination of the claim will obviously require a careful examination of the evidence. Before doing so, it is helpful to outline the pleadings.

The fixed date claim form

[5] In his fixed date claim form, the claimant seeks the following relief: -

> "1. An Order restraining the Registrar of Titles from proceeding to register any transfer in respect of the said land to any third party of any interest in the said land registered at Volume 971 Folio 554 of the Register Book of Titles or any part thereof to any person other than the Claimant, until after the trial or determination of the matter herein.
>
> 2. An Order that the Registrar of Titles provide the Claimant's Attorney -at-Law with a copy of the Defendant's application.
>
> 3. An Order that the Defendant's application be discontinued forthwith and/or put on hold pending the outcome of this application.
>
> 4. A Declaration that the Claimant is the fee simple owner of the property at LONGWOOD in the parish of Saint Elizabeth and registered at Volume 971 Folio 554.
>
> 5. An Order that the Registrar of Titles allow the Applicant to make an application for the Certificate of Title to be registered in the applicant's name and /or his nominee(s).
>
> 6. An Order that the property at LONGWOOD in the parish of Saint Elizabeth registered at Volume 971 and Folio 554 be transferred into the name of the Claimant and/or his nominee(s).

7.Such further or other relief as this Honourable Court deems fit.

8. Costs and Attorney's costs."

[6] Save for an indication of an intention to rely at trial on a letter dated July 12, 2011, from Michael D. Thomas, pursuant to section 31E of the Evidence Act 1995, the foregoing recital of the relief sought, is the extent of the pleadings. None of the mandatory requirements of CPR 8.8 are included in the fixed date claim form. In addition to the remedies sought, CPR 8.8(1)(b) states that the fixed date claim form: 'must' state the legal basis for the claim. I recently said in **P & L Lender LLC v P & L Holdings [2025] JMCC Comm 3,** where there was a similar non-compliance with CPR 8.8 that**: -**

> **"**The mandatory nature of the above-mentioned provisions of the CPR, reflect the seminal legal principle, that a defendant must know the case it is called upon to answer. Strictly speaking therefore, the claimant ought not to be allowed to rely on the statutory provisions and the legal bases for the claim which were not pleaded".

[7] The trial of this fixed date claim form is the second of two trials, and it follows a successful appeal. Since the court of appeal's decision, it certainly would have become evident to the defendant, the case he has been called upon to answer. In the circumstances, and with the defendant expressing no objection to the pleadings, I will allow the claimant to rely on them. It is well however, that counsel advising litigants, take heed of the requirements of CPR 8.8 when drafting fixed date claim forms, as they may find that failure to do so is to their client's detriment.

[8] The court's file suggests that an injunction was granted by Gayle J on March 11, 2014, preventing the Registrar of Titles from proceeding with the defendant's application for adverse possession. It is however not apparent whether that injunction was discharged after the decision of Wint Blair J, and if it was, whether it was restored after the appeal.

The evidence in support of the claim

[9] The claimant filed five affidavits in support of his fixed date claim. Three of which were sworn by him, one by his sister Sharon Lindsay, which was filed on March 10, 2014, and the fifth by Laura Thomas Bromfield filed on August 15, 2014. Laura Thomas Bromfield died before the trial, but with the agreement of the parties, the claimant was allowed to rely on her affidavit. The claimant's first affidavit was filed on April 15, 2013, and a supplemental affidavit filed on January 30, 2023. The latter affidavit incorporates and adds to the former. What he describes as his second affidavit was filed on March 10, 2014. In terms of his evidence at trial, he placed reliance on his affidavits filed on March 10, 2014, and January 30, 2023, respectively.

Evon Bennett

[10] In his affidavit filed on January 30, 2023, the claimant says that he resides in the United States of America and is an accountant. He has known the property all his life, during which time, it remained in the custody and control of his father. He says that his father purchased the property in 1974, from Aston Wesley Powell by way of a vendor's mortgage. From the time of purchase, his father exercised sole, open, quiet, continuous and undisturbed possession over the property. His father leased the property, paid the taxes and satisfied his obligation under the mortgage. When the mortgage was repaid, his father hired an attorney-at-law by the name of Clifton Neita to see about getting the mortgage discharged. Clifton Neita had in his possession the Duplicate Certificate of Title for the property, evidence of the mortgage being paid, and property tax receipts.

[11] The claimant says further that on July 26, 1999, he and his father visited Clifton Neita who promised to try to locate his father's documents. His father was then 84 years old. Clifton Neita did not follow up or contact them and died sometime in 2007. After his death, it was discovered that his daughter had custody and control

of the Duplicate Certificate of Title for the property. Despite numerous attempts, he has been unable to get in touch with her.

[12] In 2011, he became aware of the defendant, when the defendant attempted to pay the taxes for the property. He instructed Michael D. Thomas, Attorney-at-law to write to the defendant, advising him that he had no interest in the property. A copy of Michael D. Thomas' letter is exhibited to his affidavit. In 2012 he instructed his Attorney-at-law to lodge a caveat against the property when he became aware that the defendant was seeking to claim ownership of it. He exhibits an Instrument of Transfer for the property signed by his father, transferring the property to him.

[13] According to the claimant, the transfer tax for the property was paid and attempts made to pay the outstanding mortgage to the Accountant General, because neither the mortgagee nor his personal representative could be located. He says that the defendant has never been in adverse possession of the property, has not conducted any acts of ownership or maintained the property. The defendant's application has been made on fraudulent grounds and/or misleading information to deceive the Registrar of Titles.

[14] In his affidavit filed on March 10, 2014, the claimant says he and his father were the ones who paid the taxes for the property and made the application for the mortgage to be discharged. The property was rented by several tenants including Beryl Bloomfield who paid rent up until 2012. He evicted her by way of proceedings in court. His father's caretaker on the property was: "Mr Maxwell" up to the time of his death.

[15] In his oral evidence at trial, the claimant said he came back to Jamaica: "last Friday" and visited the property. It was essentially in the same condition it was in when he visited three months earlier in December 2022. He said that the property is divided into two sections. He also visited in June 2022, and while he does not know the exact date, he visited every three to six months. On all his visits to the property going back to 2020, it remained the same. When asked by his counsel,

whether he had visited the property prior to 2011/2012, he said he could not recall how many visits he made to the island before that time, but he knows that he and his father visited in 1999 to see an attorney-at-law regarding the property. In 1968 he physically left the property, and after that time, it was leased to individuals, one of whom was the defendant.

[16] According to the claimant, several persons were responsible for collecting rent, including Mr Maxwell whom he believes died in 1989. His sister Sharon Lindsay was also in charge of collecting the rent. She left the property in 1995 and the last rent receipt for funds received from the defendant was in 1993. The next indication he had that the defendant was on the property was: "in the 2011-time frame". When the defendant stopped paying rent in 1993, they believed he was no longer on the property. They were not in communication with the defendant after the last rent receipt, because he was no longer present on the property or available for communication with them. He met with the defendant: "in the 2012 timeframe", after learning that he was on the property. His father died that same year. Prior to his father's death, "in the 2010/2011 timeframe" he took more interest in the property, realising that his father was: "not keeping up with activities there as he did in the past".

[17] When he met with the defendant "in the 2011/2012 timeframe", they toured the portion of the property that had previously been rented to the defendant. On the tour he saw a chicken house which was dilapidated, there were some pig pens on the property, and he saw evidence of cultivation. No pigs were in the pen, the piggery was 3 or 4 feet off the ground, and it had no gate. The defendant introduced a gentleman who was on the property and who he said worked for him.

[18] On cross examination, the claimant said the property was purchased in two transactions and he lived on it up to 1968. His father left the property in 1968 when the family migrated. After that, his father visited Jamaica at least twice per year for many years. On one of those visits in 1974, he purchased the portion of the property the defendant is currently debating. He could not say who leased the

property to the defendant, but said his father had authorized it. His father was communicating with his sister regarding the property, so he did not have personal knowledge about any dealings between his father and the defendant. He did not know when the property was leased to the defendant but said the records show that the defendant leased the property for a two-year period. When asked what records he was referring to, the claimant said receipts and specifically a letter from his sister Sharon Henry, authorising another two-year lease for the defendant. He did not know how much the defendant paid in rent. His father died in 2012, but prior to that, his father tried to transfer the title for the property in his name but was impeded by the defendant being on it.

[19] The portion of the property that was rented to the defendant did not have a liveable dwelling house on it. There was a night club on a part of it, which was there when he left the property in 1968. He does not know when it ceased operating. When cross-examining counsel asked if he would agree that he cannot say that the defendant did not exclusively occupy the portion of the property in issue, the claimant said he could say for certain, because a night club operated there for some period of time.

[20] On re-examination the claimant said in 1999 when he and his father visited Jamaica to see Clifton Neita, they visited the property and there was no evidence that the defendant was on it. He said the property was overgrown and no one occupied it.

Sharon Lindsay aka Sharon Henry

[21] Sharon Lindsay is the sister of the claimant. Her maiden name is Henry. In her affidavit she says Keith Bennett was her father, and with his permission, she occupied the property: “intermittently” until 1995. The property was farmland and was leased to various persons. The defendant was leased approximately 4 acres, and she occupied a room. There was also a nightclub on the property. She exhibits letters, described by her as “notes” which she says she wrote to Headley Powell,

(who was her caretaker and overseer of the property), to collect rent from the lessees, including the defendant. She exhibits documents she said were receipts signed by Headley Powell, showing rent paid by the defendant. According to her, her father was a farmer, who reared cattle and goats on the property, which was fenced. Her brother, the claimant, was also responsible for paying the property taxes and she would often pay the taxes for her father. She says the claimant was well known to the defendant.

[22] In commenting on the defendant's evidence that he : a) has been in custody and control of the property since 1986; b) has never seen or been in contact with her father or anyone on his behalf; c) has fenced the property, cultivated it, built a piggery and d) employed Paul Hendricks who occupies part of a farm house built by him, to work with him on the property ; Sharon Lindsay said she is not aware of: "a lot of this", because she knows the property was fenced by her father as he used to rear goats and cows on it. She said it could be that the defendant was on the property since 1986, as he was renting it and was a tenant. She is not aware of what the defendant had on the property.

[23] In cross examination, Sharon Lindsay could not remember the period she occupied the property but said that when she left and went to Clarendon, her father asked her to pay the taxes, and she would go to Santa Cruz to pay them. When asked who had leased the property to the defendant, she said she did not know. She said she had no lease agreement relating to the defendant but had "notes" from someone she had asked to oversee the property. She was asked if she had any receipts evidencing a lease between her father and the defendant. In her response she said: -

> "No. I would not have it because that period of time when Mr Ramdatt occupied that portion of land, my dad was physically there. So, I don't know who he paid the lease to."

[24] She said it was from 1990 to 1993, that Headley Powell collected rent from the defendant, but she does not know what became of the receipts for 1990 to 1991 as it was Headley Powell who kept them. She did not know how much the defendant paid to lease the property, but said he had asked for more time on the property when he was evicted. She had no receipts for the taxes she said her father asked her to pay. The following exchange then took place between cross-examining counsel and Sharon Lindsay: -

> Q: When after your father migrated, when was the next time he returned to Jamaica after he migrated?
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> A: I wouldn't know. My dad was living in the United States of America. He visited Jamaica very often. I was not living with them so I would not know.
>
> Q: So, you would not be able to say where your father stayed when he visited Jamaica.
>
> A: He would stay in St. Andrew with his sister.
>
> Q: When Mr Evon Bennett visits Jamaica, where does he stay.
>
> A: They stay at St. Andrew as the house was not liveable for them to stay at Longwood.

[25] In re-examination, Sharon Lindsay said she received money from Headley Powell, which was paid by the defendant.

Laura Thomas Bromfield

[26] In her affidavit, Laura Thomas Bromfield says that Keith Bennett is a relative of her late husband. She says that he was responsible for the payment of taxes and very often she paid the taxes for him. According to her, the property was fenced. Around 2010 to 2011, she asked the defendant how much time he needed to vacate the

property, and he said he was no longer interested in it, he has significant parcels of land in Portland, and he was not occupying the property. She sought to reimburse the defendant for the taxes he had paid but he advised her he did not have receipts.

The evidence in response

[27] The defendant filed an affidavit in response on October 31, 2013. In response to the claim, he also relies on the affidavit of Andrea Barnett, also filed on October 31, 2013.

Raymond Ramdatt

[28] In his affidavit in response to the claim, the defendant says that he lives at Olive Park, Santa Cruz in the parish of St Elizabeth. He has been in custody of the property since 1986 and has never seen, been in contact or had any dealings with Keith Bennett or anyone on his behalf. He treated the property as his own, fenced it, ploughed the land to prepare for pasture, and grew fruits including coconuts, mangoes, ackee, breadfruits and avocado. He built a piggery where he grew several pigs and employed several persons to work for him. One of the persons he employed is Paul Hendricks who has been working with him for over fifteen years. He hired Llewelyn Allen, a Commissioned Land Surveyor in August 2011, to survey the property he occupies. He exhibits a copy of that survey plan to his affidavit.

[29] The defendant says that at no time since 1986, has he paid “lease” to Keith Bennett, or to anyone on his behalf. He denies ever leasing the property. He paid property taxes, and he exhibits a receipt in the amount of $193,655.00, representing taxes paid for the years 2007 to 2011. According to him, he was the one to repay the outstanding mortgage along with interest, to the Accountant General’s Department through his Attorneys-at-law, Delroy Chuck and Company. He exhibits a receipt from the Accountant General’s Department in the amount of $155,680.00, dated April 26, 2012. In January 2010, he applied to the Registrar of

Titles to have the property registered in his name and his application was conditionally approved on December 10, 2012. A copy of his application is exhibited to his affidavit[2]. He received a letter dated July 12, 2011, from Attorney-at-law, Michael Thomas, in relation to a parcel of land registered at Volume 1057 Folio 696 of the Register Book of Titles, which is not the land, the subject of the current claim. The claimant lodged a caveat against the title for property on March 20, 2013.

[30] On cross examination, the defendant said he was 38 years old when he went on the property, and at that time, he was employed to the Ministry of Agriculture, Engineering Department, in Kingston. He denied knowing or ever meeting Keith Bennett and said he does not even know what he looks like. He was always interested in farming and is presently a farmer. In explaining how he came to the property, he said that over a period of time, there was criminal activity including robberies in the area of Olive Park. Coming from the main road and heading to Olive Park, the property is on the left of the minor road. Children going to and from school had to pass through this minor road to get to the main road and they were being robbed. The area was overgrown with trees and had small tracks to accommodate criminals. He decided to clear the area, and eventually, in order to maintain it, he decided to plant a few things and raise some animals. He made a piggery, he planted trees: “coconut, lumber, cherry, plums, ackee, guinep, apples, all the different fruits you can think of, sweet sop, banana and plantains.” He also says he has other short-term crops such as peppers and carrots. He still maintains the property but stopped planting vegetables due to the: “court issue”. When asked by cross-examining counsel, what would be seen were the court to visit the property, he said coconut trees, the sweet sop, apples, guinep, star fruit and mango trees.

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[2] The copy of the application exhibited was sworn on January 11, 2011

[31] According to the defendant, he does not live on the property. He lives at 462 Olive Park, which is a two to five minutes' walk away. He denied knowing Keith Bennett. While he worked in Kingston, he stayed with his brother in Mandeville during the week and returned home on weekends. He has workers who worked on the property along with his wife. He does not know either Headley Powell or Sharon Lindsay and has never met them. The property is large, there are two sections to it, and the only adjoining neighbour he knows is Earnel Guthrie. He acknowledged that in his application for adverse possession, he made no mention of Keith Bennett being an adjoining landowner and that rather than paying the taxes over time, as stated in the application, he paid them in one lump sum. He came to know about Laura Bromfield during the: "court issue", and has never met her. He denied having any conversation with her about needing time to vacate the property. When asked whether he received a letter from a lawyer regarding: "462 Olive Park" informing him that he was not authorised to pay the property taxes, he denied receiving any such letter.

[32] The defendant denied that in 1996 he decided he did not want anything more to do with the property, and said that at that time, he had cows, goats, pigs and chickens, but not as much as he did before. He admitted that when he went on the property there were trees, but said they were useless, and not crops for fruits. He denied that when he met with the claimant, he was told to remove a tractor that was on the property. He said that the claimant asked him if the tractor was his and he said it was not. Eventually, said the defendant, the owner for the tractor came and removed it. He said his Attorney-at-law advised him to stop paying the property taxes until the court decides the claim.

Andrea Barnett

[33] Andrea Barnett resides at Logwood Santa Cruz in the parish of St. Elizabeth. She says she is well acquainted with the property for over twenty years and the defendant has been in physical possession of it since 1986. She has seen him bring a plough on the land for farming, and he has reared cows and pigs, and

grew free crops. According to her, everyone around Olive Park, treat the defendant as the owner of the property.

[34] In cross examination, she said she is self-employed and sells things from her home. She knows the people in Olive Park, but does not know Keith Bennett, Laura Bromfield or Sharon Lindsay. She is acquainted with both the defendant and his wife but is more acquainted with the defendant's wife. When asked if she had visited the defendant's wife at home, she said she mostly visited the farm as the defendant's wife was always farming on the farm.

[35] Andrea Barnett says she became acquainted with the defendant's wife in 1988 when she went to Olive Park to live. Since 1988, she has visited the defendant's wife on the farm. She described the farm as: "really big" and said she did not see any buildings on it. Besides the defendant's wife, she knew Mr Guthrie, but he died. She also knows the Mendez. She has not seen the defendant's wife in a while, as she is not in the island. According to her, she does not know what the defendant's occupation is, but she knows that he does: "a lot of farming". She said that if the court went to the defendant's farm, it would find coconuts, plantain, apple trees and soursop trees. When asked if she had seen the defendant plant these trees, she said: "no".

Analysis and discussion

[36] Ms Lisamae Gordon, counsel for the claimant, argues in her written submissions that since the defendant is claiming adverse possession, the burden of proof is on him to show that he has obtained at least twelve years' possessory title for the property. Learned counsel submits that it is not for the claimant to demonstrate ownership, but it is for the defendant to prove discontinuance of possession by the paper owner or his dispossession of the paper owner. She further submits that: -

> "In order for Mr Ramdatt to prove title to Keith Bennett's land over and above that of Mr Evon Bennett, who is his son, the transferee and the beneficiary

of the paper owner, there must be both physical possession and an intention to possess for at least 12 years".

[37] These submissions, however, seem to ignore the court of appeal's determination, earlier referred to in this judgment. The estate of Keith Bennett is unadministered. The court of appeal after reviewing several decided cases on the question of the status of a beneficiary under an unadministered estate, observed that such a beneficiary acquires neither a legal nor a beneficial interest in the estate, but is instead entitled to a chose in action. It is plain therefore that the claimant has no legal or beneficial interest in his father's estate, and the only basis on which he could pursue this claim, is by contending that his father had a possessory title to the property, superior to that of the defendant, and that he now claims through his father and on his own behalf.

[38] At paragraph 54 of its judgment, this is how the court of appeal, said it:

> "The appellant's claim is that he has been in possession of the property. His evidence on affidavit supports his claim that he was also claiming title through the person whom he alleges to have been in possession, his father. It was his evidence that his father, Keith Bennett, exercised sole, continuous and undisturbed possession of the land, including leasing the land to various persons. By that evidence the appellant has *prima facie* demonstrated, that he has the required locus standi to institute these proceedings."

At paragraph 57, leaving no doubt that this was the basis on which the claimant could bring the current claim, the court continued: -

> "Importantly also, the appellant was not required to obtain a grant administration prior to instituting these proceedings in its current form as would be required had he claimed in another capacity".

[39] The burden of proof in this case is therefore squarely on the claimant, and not on the defendant. It is the claimant who must prove, on a balance of probabilities, that his father had a possessory title superior to that of the defendant.

[40] It must also be said that counsel Miss Gordon is not on accurate footing in referring to the claimant as a "transferee" of the paper owner. Under the ROTA, a transfer is incapable of passing any interest in registered land until it is duly registered.[3] It is common ground in these proceedings that no such registration took place.

The property

[41] It is important to carefully consider the property that is in issue. Keith Bennett is the registered proprietor of land which is described on the certificate of title registered at volume 971 folio 554 as follows: -

> "ALL THAT parcel of land part of LONGWOOD in the parish of SAINT ELIZABETH containing by survey Nine Acres One Rood Thirty-two Perches and Two-tenths of a Perch of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed".

While the defendant claims in his application before the Registrar of Titles, for adverse possession in respect of land comprised in the certificate of title, it is only 21,298.495 square meters or approximately 5.26 acres of that land which is the subject of his adverse possession application and represented in the survey plan on which he relies. The question is therefore whether the claimant and his father (before he died), were in possession of these 21,298.495 square meters or approximately 5.26 acres of the property.

Whether the claimant and his father were in possession of 21,298.495 square meters or 5.26 acres of the property

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[3] See sections 63 and 88 of the ROTA

[42] In resolving this issue, the evidence of the claimant and his witnesses is crucial. It is significant that the claimant could not say for certain that the defendant does not exclusively occupy the portion of the property he is claiming to have adversely possessed. He felt able to say on cross examination that the defendant did not exclusively occupy it, because a night club operated there. Yet, his own evidence was that he left the property with his family in 1968 and does not know when the nightclub ceased operating. It is also significant that the claimant does not know either who leased the property to the defendant, or when it was leased to him. His witness Sharon Lindsay is unhelpful in this regard. She does not know who leased the property to the defendant, how much he paid for rent, nor when the property was leased to him.

[43] What is also remarkable about Sharon Lindsay's evidence is her explanation for not having any receipts to prove the existence of a lease between her father and the defendant. It is recalled that her evidence is that the lease between her father and the defendant occurred at a time when her father was physically on the property. This obviously begs the question: what time was that? The evidence is that her father migrated in 1968, and he purchased the property in 1974. He visited Jamaica every three to six months and when he visited, he stayed with his sister in St. Andrew. On this evidence, there was no time that he was "physically on the property" to lease it to the defendant. Her evidence that her father was a farmer and tended cattle and goats on the property is also questionable for this same reason.

[44] I do not find the claimant's and Sharon Lindsay's evidence, that the defendant was paying rent from 1990 to 1993, to be credible. Sharon Lindsay claimed to have exhibited receipts as proof that the defendant was paying for a lease, but what she in fact exhibited are copies of stubs from a rent book. She relies specifically on one marked number 8 and another marked number 10. Stub number 8 is dated April 25, 1992, and is said to cover the period April 25, 1992, to April 1993, while stub number 10, is dated July 19, 1992, and covers the period June 1992 to June 1993. What is immediately obvious, is that both these stubs cover the months of January

1993, February 1993, March 1993 and April 1993. This duplication was not explained by Sharon Lindsay, and it is passing strange, that the defendant would have paid rent twice, for this four-month period. What is also quite amazing, is that Sharon Lindsay claims in her affidavit evidence, that the defendant paid rent during this period to her overseer, Headley Powell and in one of the "notes" she exhibits, which is a letter to him dated September 25, 1993, she wrote: " Since you have already spoke to Mr Ramdad go ahead and rent him the land for 2 yrs, two yrs."; yet in cross examination she did not know who rented the property to the defendant.

[45] In the same note dated September 25, 1993, the 2 years referred to by Sharon Lindsay, were not qualified by the word: "another"; yet at trial, the claimant in making the point that the defendant had been a tenant prior to September 25, 1993, gave evidence that by this letter his sister was authorising "another "two-year lease". Another curious thing about the claimant's evidence is he and Sharon Lindsay both say that the defendant did not pay rent after 1993, and they did not know he was still on the property as there was no communication with him. Yet, in one of Sharon Lindsay's notes, dated January 4, 1994, she writes to Headley Powell to: "Please collect the lease for the last piece of land from Mr Ramdatt and pay a part of the taxes for me…". And in another note, dated May 6, 1994, she writes: "See Mr Ramdatt and let him know I'll be down there." No explanation has been given for these obvious contradictions.

[46] Sharon Lindsay's evidence that the defendant knew the claimant well is rather incredible, given the claimant's own evidence that he came to know about the defendant in 2011, when he attempted to pay the taxes. Her further evidence that the defendant had asked for more time when he was evicted, is inexplicable. She does not say to whom the defendant asked for more time, nor does she give any evidence of when this eviction allegedly took place.

[47] I find that the defendant's evidence that from 1986 to 2011, he has been in sole, open and undisturbed possession of the portion of the property the subject of his

application for adverse possession, has not been seriously challenged. There is no credible evidence that he was in possession since 1986, or between 1990 and 1993, as a tenant of either Keith Bennett, the claimant or anyone else. The evidence of his witness Andrea Barnett has also not been seriously challenged.

[48] In the: "2011/2012 timeframe", when the claimant toured the property, he was aware that the defendant was on the property and had clearly been there for some time. A dilapidated chicken house, planting and cultivation, and the remains of a piggery were in my view, clear signs that the defendant had been on the property prior to the tour. I frankly do not accept as reliable, the claimant's evidence that in 1999, he visited the property with his father, and that there was no sign that the defendant was on it. Given what the claimant said he saw on his tour with the defendant in 2011/2012, and given the inconsistencies in his evidence and that of his witness Sharon Lindsay, I find, on a balance of probabilities, that had he visited the portion of the property occupied by the defendant in 1999, he would have seen signs that the defendant was in fact in possession of the portion which he claims he occupied since 1986.

[49] I do not find the evidence of Laura Bromfield helpful. She was, of course, not available for cross examination, as she had died by the time of trial. She claims to have asked the defendant in: "2010 to 2011", how much time he needed to vacate the property, and he said he was no longer interested in it. What is peculiar about this evidence is that she does not say the authority she had to make this enquiry, and when she was bestowed with it. It is recalled that Sharon Lindsay said her overseer for the property was Headley Powell. Furthermore, the claimant's own evidence is that in the: "2011/2012 timeframe" he toured the property with the defendant and saw that he was in fact on it. He gave no evidence of requesting that the defendant leave the property.

[50] The letter from Michael D Thomas, Attorney-at-law, was not written in relation to the property. That may have been his intention, but the fact is, it referred to an entirely different parcel of land. To argue, as Ms Gordon does, that the defendant

blatantly lied when he said in cross examination that he received no letter in relation to 462 Olive Park, is an unwarranted criticism. Not only is 462 Olive Park the address where the defendant resides, and is not the address of the property, but the land the subject matter of the letter, is not the property.

[51] The omissions made by the defendant in his application before the Registrar of Titles, relating to the survey of the property, and the payment by him of property taxes in one lump sum rather than over several years, do not impugn his evidence, that between 1986 and 2011, he had been in open, sole and undisturbed possession of 21, 298.495 square meters or approximately 5.26 acres of the property. Ms Gordon submitted that the defendant acted on the instructions of the claimant and removed a tractor from the property in 2011/2012, and this is evidence that the defendant lacked the necessary animus to be in possession. I reject this submission. The defendant's unchallenged evidence was not that the claimant instructed him to remove the tractor, but that the claimant asked him whether it was his, he said it was not, and eventually the owner of the tractor removed it.

[52] The defendant's application before the Registrar of Titles is under section 85 of the ROTA. By this section, a person claiming to be in undisturbed possession of privately owned land for a period of at least twelve years can apply to be registered as the registered proprietor. It is well known that this twelve year period is related to the combined effect of sections 3 and 30 of the Limitation of Actions Act, which is that actions for the recovery of possession of land must be brought within a period of twelve years after the cause of action has accrued; and once that limitation period has expired, the paper title owner's right and title to the land are extinguished.

[53] As observed earlier, the defendant's application was made on January 11, 2011, and conditional approval has been granted. The primary remedy being sought by the claimant in the claim (which was filed after the defendant's application), is a declaration that he is the fee simple owner of the property. To succeed, he needed

to discharge the burden on him to prove that his father had a possessory title superior to that of the defendant. The claimant has not provided any credible evidence that his father (through whom he claims), was in physical possession of the 21, 298.495 square meters or approximately 5.26 acres of the property (which is the subject of the defendant's application for adverse possession), for a period of 12 years prior to the filing of the defendant's application in 2011. Neither has he provided any credible evidence that he was in possession in his own right. Indeed, the evidence of the defendant, which has not been challenged in any effective way, is that he has continued to be in possession of that portion of the property up to the time of trial.

Conclusion

[54] In the result I find that the claimant has failed to prove on a balance of probabilities that his father had a possessory title superior to that of the defendant or that he has one in his own right. I therefore make the following orders:

a) The fixed date claim form is dismissed.

b) If the injunction granted by Gayle J on March 11, 2014, restraining the Registrar of Titles from proceeding with the defendant's application for registration of title under section 85 of the Registration of Titles Act, has not earlier been discharged, it is hereby discharged.

c) Costs to the defendant to be agreed or taxed.

A Jarrett
Puisne Judge