



[2025] JMSC Civ. 92

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV03275

BETWEEN VELROSE COUSINS CLAIMANT

AND CHESTER PASSLEY 1st DEFENDANT

AND CAMECA PASSLEY 2nd DEFENDANT

AND CHESTER PASSLEY 3rd DEFENDANT
(In his capacity as Executor of
the Estate of JOHN PASSLEY)

IN CHAMBERS

Nicholas Chambers, Attorney-at-Law, instructed by Legal Chambers and Shakeira Dunkley, Attorney-at-Law, of counsel, for the Claimant

Sacia Anderson-Cousins, Attorney-at-law, of counsel, for the Defendants

Heard: May 15 & 17, 2023, July 8, 2023, November 27 & 28, 2023, December 20, 2023, March 1, 2024 and July 25, 2025

CIVIL PROCEDURE - Whether, by operation of the *Limitations of Actions Act (LAA)*, the claimant's alleged adverse possession of a portion of the disputed land, extinguished the registered title of the said property, held by the estate of the deceased proprietor - Whether an implied licence can defeat an adverse

possession claim - Whether the 1st defendant could have given an implied licence to the claimant to occupy the disputed property - Whether the court should order that the Registrar of Titles cancel the existing certificate of title registered at volume 1158 folio 668 of the Register Book of Titles and order that the Registrar of Titles issue a new title with the name of the claimant endorsed as tenant-in-common in equal shares with the 1st defendant - Whether the court should order that all legal and/or beneficial interest in the disputed property vests in the 1st defendant and the beneficiaries of the estate of the late John Passley - Whether the court should order that the claimant deliver up possession of the disputed land in favour of the 1st defendant and the beneficiaries of the estate of the late John Passley - Sections 3 & 30, Limitation of Actions Act, Sections 68 & 158, Registration of Titles Act

ANDERSON K. J

BACKGROUND

The Claimant's Case

[1] This claim was initiated by way of fixed date claim form and affidavit of Velrose Cousins in support of said fixed date claim form, both of which were filed on August 31, 2020. The claimant contends, inter alia, that she resides and has her true place of abode at the disputed property, which is described as all that parcel of land part of Drapers in the parish of Portland containing by survey twenty-eight perches and two-tenths of a perch and the land comprised in certificate of title registered at volume 1158 folio 668 of the Registrar Book of Titles. The claimant also contends that at about the age of eleven years, she was taken in and raised by Ishmael Passley and his wife, Sitira Passley, and that, Ishmael Passley is the brother of the deceased, John Passley. She further contends that the disputed property was initially owned and occupied by Dorcas Passley, deceased, mother of Ishmael Passley and John Passley.

[2] The claimant asserts that at the time she began to reside with Ishmael and Sitira Passley, there was only a dilapidated board house on the disputed property, where they all lived. She also asserts that the couple treated her as their child as they did not have children. She further asserts that in or about 1991, the house in which she and the Passley couple lived, was destroyed by fire, and that, the house was replaced with the assistance of the government. She claims that she was also gifted a board house by the

government, and that she constructed a kitchen, using board. She also claims that at that time, Ishmael and Sitira Passley instructed her to take possession of a part of the disputed property, and that, the portion of the disputed property that she was told to take possession of, was to be solely hers. She further claims that the Passleys instructed that, upon their death, the entirety of the disputed property was to be hers.

[3] The claimant claims that she had cared for Ishmael and Sitira Passley until their death in or about 1991 and 2003 respectively. She also claims that after the death of Sitira Passley, she paid the property taxes for the disputed property, without the assistance or the contribution of the 1st or 2nd defendants. She further claims that since 1991, she has been occupying a part of the disputed property, exercising all acts of ownership, without molestation from anyone, and that, she was regarded by everyone as the rightful owner and occupier of the said portion of the disputed property on which her house is located, as well as the entirety of the disputed property. It is the claimant's case that prior to the death of Ishmael Passley and Sitira Passley, Chester Passley, the 1st defendant, had never asserted ownership over the entirety of the disputed property. However, the claimant contends that he had always resided in a house on a part of the said disputed property since she was a child.

[4] It is the claimant's case that in or about 2017, the 2nd defendant approached her and informed her that she (2nd defendant) needed to build a house, since she was given notice to leave her former residence. It is the claimant's contention that she informed the 2nd defendant that she could build a house to the front of the disputed property, and that, the 2nd defendant constructed her house on a part of the said property. The claimant claims that the 2nd defendant showed her a purported certificate of title registered at volume 1158 folio 668 of the Register Book of Titles in the name of John Passley. She also claims that the 2nd defendant demanded payment of rent, but that, she refused to comply, and that, she informed the 2nd defendant that she was put in ownership of the entirety of the disputed property for several years, and that, she is regarded as the rightful owner of the said property. She asserts that she is only now learning that John Passley is the purported sole owner of the disputed property, and that, Ishmael and Sitira Passley were always regarded as the rightful owners.

[5] The claimant asserts that on or about October 2018, she received a letter from Yvonne D. Ridguard Harris, of counsel, stating that Chester Passley was her landlord, and that, she was in occupation as a licensee of Chester Passley. She also asserts that she has never been a tenant or licensee of Chester Passley, and that, she has no interest in claiming the entirety of the disputed property, but only the portion on which she built her house, raised her family, and for which she has been in sole possession. She further asserts that since she has refused to pay rent or acknowledge Chester Passley as the rightful owner of the disputed property, or to recognize the purported certificate of title in the name of John Passley, the 2nd defendant has been harassing her, has been a nuisance and has made life difficult to enjoy peace and quiet in her home. She claims that the 2nd defendant has been dumping garbage at her doorway and at the back of her house. She also claims that the 2nd defendant has been throwing waste water at the front of her house, and that, the 2nd defendant has threatened her with physical bodily harm on several occasions. She further claims that she has reported several threats to the San San Police Station because she fears for her safety, and that of her adult children.

[6] The claimant contends that the value of the house, which she occupies on the disputed property, is seven hundred thousand dollars **(\$700,000.00)**. She claims the following, inter alia:

'a. A declaration that the claimant is entitled to a beneficial interest in All that parcel of land of Drapers in the parish of Portland containing by survey twenty-eight perches and two-tenths of a perch and the land comprised in certificate of title registered at volume 1158 folio 668.

b. An order that the 1st defendant be appointed administrator ad litem in the estate of John Passley for the purposes of the transfer of the claimant's interest.

c. An order directing the Registrar of Titles to cancel the certificate title registered at volume 1158 folio 668.

d. An order directing the Registrar of Titles to issue a new title with the name of the claimant endorsed as tenant-in-common in equal shares.

e. An order that the 1st, 2nd and 3rd defendants, whether by themselves, their agents or servants be restrained from taking any step or steps by way of sale, assignment of rights, title or interest, which they now purport to have in the said property registered at volume 1158 folio 66, or from doing any act or acts whatsoever to create rights, title or interest to themselves, jointly and/or severally or to any other person or persons in the said properties or generally acting to the prejudice of the claimant with regard to the said property save and except as ordered by this honourable Court.

f. An order that the 1st, 2nd and 3rd defendants, whether by themselves, their agents or servants be restrained from watching or besetting the dwelling house of the claimant, following or waylaying the claimant, using abusive or threatening language or behaving in a manner that will cause the claimant annoyance or result in ill-treatment and doing and taking any actions to cause a nuisance and interfere with the peaceful enjoyment of the claimant's residence and to prevent waste water entering unto the part of the land occupied by the claimant registered at volume 1158 folio 668 of the Register Book of Titles.'

The Defendants' Case

[7] The defendants filed their ancillary claim form/counterclaim on March 1, 2021. They claim against the claimant on the grounds that:

'a) The claimant is currently living on all that parcel of land containing by survey twenty-eight perches and two tenths of a perch and comprised in the certificate of title registered at volume 1158 folio 668 of the Register Book of Titles to John Passley as the sole proprietor hereinafter called the disputed land or the said land.

b) The proprietor, John Passley, died intestate on the 26th day of August, 1988.

c) The 1st defendant is a beneficiary of the estate of John Passley, the 3rd defendant herein.

d) An application has been made to the Supreme Court by the 1st defendant for a grant of administration in said estate.'

[8] The defendants filed their defence and affidavit in support of their ancillary claim on March 1, 2021. The said defence and affidavit was deponed to by the 1st defendant, Chester Passley. He has averred that he is the son of the deceased, and that, he is one of the beneficiaries in the estate of John Passley, the deceased. He has also averred that the 2nd defendant is his daughter, and that, the deceased died without leaving a will. He has further averred that he has applied for a grant of administration, and that, he has lived on the disputed land since he was a teenager. It is the defendants' case that since the death of John Passley, he took control of the said land, exercising all acts of ownership over same, on behalf of himself and the other beneficiaries. It is the 1st defendant's contention that he has always treated the disputed land as his own, and that, he has granted permission to others to occupy the land, and has granted leases in respect of the said land. In addition, the 1st defendant has deponed that he and the 2nd defendant planted a vegetable garden at the back of the disputed land, behind the house in which the claimant resides, and that, he raises chickens and goats beside the claimant's house. It is also the 1st defendant's contention that maintaining the land has always been his sole responsibility. The defendants further contend that they have their concrete dwelling house at the front of the land, while the claimant has her house to the back, and that, his daughter has her business place, a bar, which is also a concrete structure, to the front of the land.

[9] The defendants assert that they have unencumbered access to the entire property at all times, and that, they have never stopped going onto the said land. They also assert that the claimant has never attempted to prevent them from doing so, or from exercising acts of ownership over same. They further assert that the only area of the said land that they have not frequented, is the claimant's house, and that, the claimant does not have exclusive possession over any portion of the disputed land. The 1st defendant has deponed that Dorcas Passley, his grandmother, gave the said land to his father, John Passley, and that, she told the 1st defendant that when he became an adult, that he should, '*take it over*'. He maintains that the claimant has lived on the disputed

property with his permission, and that, he has never discontinued possession of the said land. He also maintains that all members of the community acknowledge him as the true owner. In addition, he maintains that he lived on the disputed land before the claimant began to live with Ishmael and Sitira Passley, and that, he had begun to assert ownership over the said land when his father died in 1988. He further maintains that the claimant did not build a house on the said land, and that, the claimant and her family, have been harassing and threatening him and his family. It is the defendants' contention that they have had to report numerous threats by the claimant and her adult children to the San San police.

[10] The defendants seek the following orders:

'a) A declaration that all the legal and beneficial interest in all that parcel of land containing by survey twenty-eight perches and two-tenths of a perch and comprised in the certificate of title registered at volume 1158 folio 668 of the Register Book of Titles to John Passley as the sole proprietor vests in the 1st defendant and the beneficiaries of the 3rd defendant.

b) An order for recovery of possession of the disputed land against the claimant and that she quits and delivers up possession of the said land.

c) An order that the claimant and all who reside with her vacate the disputed land and remove their wooden house and all that belongs to them.

d) An interim, and subsequently, a final order that the claimant, her adult children, any other members of her household and anyone acting on her behalf, be restrained from threatening or harassing the 1st and 2nd defendants and their family.

e) Costs.

f) Such further and other relief as this honourable court deems fit.'

[11] Chronology of key events

1. The claimant allegedly began to reside on the disputed property when Ishmael Passley, brother of John Passley, deceased, and his wife, Sitira Passley, took her to live with them, when she was between the ages of 11 - 13 years old. The year that this happened is not in evidence.
2. Allegedly, in or around 1991, the house in which the Passleys, claimant and her young child dwelled, was destroyed by fire, and the house was replaced with the assistance of the Jamaican government.
3. Allegedly, in or around 1991, the government of Jamaica had gifted the claimant with a board house, which contained two bedrooms and a verandah. Subsequently, she allegedly used board to construct a kitchen on the said board house. Allegedly, in the same year, Ishmael and Sitira Passley instructed her to take possession of a part of the disputed property, and that, the part of the property that she would take, was to be solely hers, and that, upon their deaths, the entire disputed property was to be hers.
4. Allegedly, since on or around 1991, the claimant has been occupying a part of the disputed property, exercising all acts of ownership, without molestation from anyone, and is regarded by everyone as the rightful owner and occupier of the said portion of land, as well as the entirety of the disputed property.
5. Allegedly, Ishmael Passley and Sitira Passley died in 1991 and in 2003 respectively.
6. Allegedly, in or around 2003, the claimant, without the assistance or contribution of the 1st or 2nd defendants, paid the property taxes for the disputed property.
7. Allegedly, prior to the deaths of Ishmael and Sitira Passley in 1991 and in 2003 respectively, Chester Passley had never asserted any ownership over the entirety of the disputed property, but that, he had always resided in a house on another part of the said property, since the claimant was a child.
8. Allegedly, in or around 2017, the 2nd defendant, the 1st defendant's agent, approached the claimant and requested that she pay rent for the part of the property on which she resides, and showed her a certificate of title, purportedly for the said property,

in the name of John Passley as sole proprietor. The certificate of title, in relation to the disputed property, indicates that John Passley was the sole proprietor of all of the disputed property registered at volume 1158 folio 668 of the Register Book of Titles.

9. The 1st defendant was appointed as administrator of the late John Passley's estate on June 8, 2021.

10. The relevant death certificate indicates that John Passley died on August 26, 1988, and that the said certificate was issued on September 26, 2018.

ISSUES

[12] The following issues are now before the court for determination:

1. Whether, by operation of the ***Limitations of Actions Act (LAA)***, the claimant's alleged adverse possession of a portion of the disputed land, extinguished the registered title of the said property, held by the estate of the deceased proprietor.

2. Whether an implied licence can defeat an adverse possession claim.

3. Whether the 1st defendant could have given an implied licence to the claimant to occupy the disputed property.

4. Whether the court should order that the Registrar of Titles cancel the existing certificate of title registered at volume 1158 folio 668 of the Register Book of Titles and order that the Registrar of Titles issue a new title with the name of the claimant endorsed as tenant-in-common in equal shares with the 1st defendant.

5. Whether the court should order that all legal and/or beneficial interest in the disputed property vests in the 1st defendant and the beneficiaries of the estate of the late John Passley.

6. Whether the court should order that the claimant deliver up possession of the disputed land in favour of the 1st defendant and the beneficiaries of the estate of the late John Passley.

The Claimant's Claim:

Whether, by operation of the *Limitations of Actions Act (LAA)*, the claimant's alleged adverse possession of a portion of the disputed land, extinguished the registered title of the said property held by the estate of the deceased proprietor.

The Claimant's Submissions

[13] It is the claimant's case that she began to adversely possess a portion of the disputed property in or around 1991, without molestation from anyone, and that, she exercised all acts of ownership, and was regarded by everyone as the rightful owner and occupier of that portion, as well as the entirety of the said property. It is also the claimant's case that she had permitted the 2nd defendant to build her house and reside on the said property in or around 2016, and that the 1st defendant had never asserted any right to ownership, until the 2nd defendant had begun to so act. However, she claims that Chester Passley, the 1st defendant, had always resided in a house on a part of the disputed property. She also claims that Ishmael and Sitira Passley had treated her as their child and showed her much love and affection. She further claims that she had cared for both Ishmael and Sitira Passley until their deaths on or around 1991 and 2003 respectively.

[14] The claimant contends that in or about 2003, she paid taxes for the disputed property, without the assistance or contribution of the 1st or 2nd defendant. She also contends that on or around 2004, she had entered into a contract with the National Water Commission the (NWC), which supplied water to the disputed property, and that, on or around 2008, she had applied for and was supplied with electricity from the Jamaica Public Service Company (JPS) for the portion of the premises wherein she resides. She further contends that she had raised her daughter and two sons in her house. She further claims that on or about 2003, she paid taxes for the disputed property, without the assistance or contribution of the 1st or 2nd defendant. She asserts

that she had raised her daughter and her two sons in her house, on the said property, and that, she had cared for two disabled adults on the said premises. She also asserts that she had added two bedrooms to the said house in order to accommodate the disabled adults.

[15] It is the claimant's contention that in or around 2017, the 2nd defendant approached her and requested that she pay rent for the part of the property on which the claimant resides, and that, the 2nd defendant showed her a certificate of title, purportedly for the said property, in the name of John Passley. It is also the claimant's contention that she was then learning, for the first time, that John Passley was the sole owner of the premises, and that, Ishmael and Sitira Passley were always regarded as the rightful owners. She asserts that on or about October 2018, she had received a letter from Yvonne D. Ridguard Harris, of counsel, stating that Chester Passley was her landlord, and that, she was in occupation as a licensee of Chester Passley. She also asserts that she had never been a tenant or licensee of Mr. Passley, and that, she has no intention of paying rent for the portion of the property, which she considers to be rightfully hers. She further asserts that, because she refused to pay rent, or acknowledge the purported certificate of title and the 1st defendant as the rightful owner of the disputed property, the 2nd defendant has continued to harass and be a nuisance to her.

The Defendants' Submissions

[16] The defendants submit that John Passley was the sole proprietor of the disputed property, and that, the 1st defendant is the administrator and beneficiary of the said property. They also submit that the 2nd defendant is the daughter of the 1st defendant, and that, both the 1st and 2nd defendants reside on the said property. They further submit that a grant of administration was made to the 1st defendant, on June 8, 2021, and that, on March 14, 2023, an order was made that the 1st defendant be appointed in a representative capacity, as the personal representative of the deceased's estate (disputed land). It is the defendants' case that the 1st defendant, the son of John Passley, deceased, is the rightful owner and beneficiary of the contested property. It is

also the defendants' case that the 1st defendant has allowed the claimant to occupy the disputed property with his consent, and by extension, with the consent of the 2nd defendant, who he has authorized to act on his behalf, in relation to the property. They contend that the claimant has not acquired a beneficial interest in the estate, and seek recovery of possession against the claimant, and all who occupy the said property with her.

The Court's Analysis

The Relevant Law

[17] **Section 3 of the Limitation of Actions Act (LAA)** provides:

'3. No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.'

The closely related provision, **section 30** of the same act, reads:

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

[18] **Section 68 of the Registration of Titles Act (RTA)** is also central to this matter. It reads as follows:

'68. No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity

*in the application of same, ...and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, **subject to the subsequent operation of any statute of limitations**, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.'* (Emphasis mine)

It is evident from the provision above that the indefeasibility of a registered title, and the concomitant right of the registered owner to possession of his property, is subject to a subsequent operation of the statute of limitations, which can pass title to someone else.

[19] According to the learned author, Sampson Owusu, **Commonwealth Caribbean Land Law, 2007**, at pages 267 & 269:

'Title by adverse possession is instituted by legislation which operates to bar the claim of a true owner whenever the circumstances surrounding the possession of the stranger are found to be sufficient to manifest incompatibility with the title of the true owner. The doctrine therefore affords a means by which title to land can be acquired without any payment...From the start to the end of the limitation period, there should be continuous acts of possession...possession is a matter of fact depending on all the particular circumstances...possession cannot, in the nature of things, be continuous from day to day. There would be no interruption, for example, if the squatter is away on vacation or working. If the land is adapted for seasonal pursuits, the test of continuity would be met if the land is utilized seasonally by the squatter...'

Possession

[20] The learned author went on to explore the elements of possession, which must be satisfied in order for the claimants, through their agent, to prove possession of the disputed land. The elements are factual possession and intention to possess. Regarding factual possession (*'factum possessionis'*), Owusu stated at page 283: *'There should be acts of physical custody and control of the land or some degree of physical occupation.'* According to the Guyana Court of Appeal in **Li v Walker (1968) 12 W.I.R. 195, 206**, factual possession *'depends on the quality of occupation, and the circumstances in which it takes place. The circumstances should show: "sole and undisturbed possession, user and enjoyment deliberately, adversely and exclusively*

exercised” for the limitation period.’ At page 288, Owusu opined that fencing or enclosure is the strongest possible evidence of adverse possession, but, according to the English Court of Appeal in **Seddon v Smith (1877) 36 L.T. 168**, that act is not indispensable. In that case, the disputed land was used to raise cabbages, potatoes, and other produce; the land was ploughed up and prepared in all sorts of ways necessary for that purpose for a period considerably more than twenty years. It was contended on behalf of the defendant, the paper owner, that such acts did not constitute assertion of an adverse possession, and that there should be something excluding other people, such as erecting fences. The court firmly rejected that contention, Brett L.J.’s reasoning was that, in a country where fences are not customary, and only paths or lines divided the land of different owners from each other, mere user of another man’s plot of land, could amount to adverse possession. Brett L.J. said that evidence of a user such as a farmer would exercise over such a part of his farm, is evidence of adverse possession. Therefore, cultivation of land or the erection of substantial structures on it, would satisfy the requirement of factual possession.

[21] Owusu opined, at page 291 of his text, that, in addition to factual possession, the claimant should show an intention to possess the land to the exclusion of all others, including the paper owner. Browne-Wilkinson L.J. emphasized this ingredient of ‘*animus possidendi*’ as a necessary ingredient in **Ja. Pye (Oxford) Ltd and another v Graham and another [2000] 2 EGLR 137**: ‘*But there is no doubt in my judgment that there are two separate elements in legal possession. So far as English law is concerned intention as a separate element is obviously necessary.*’ The learned author also propounded that the requirement of ‘*animus possidendi*’ can be inferred from the acts of possession. He further propounded that, where, therefore, the acts of possession are certain, unequivocal and affirmative, the requirement of *animus possidendi* loses its importance as an ingredient of a claim for adverse possession. On the other hand, where it is required to be proved as a separate condition, it should be evident that the acts of the squatter were aimed at dispossessing the world at large, including the true owner. According to **Powell v McFarlane (1977) 38 P. & C.R. 452, 471**, per Slade J: ‘*[There should be an] intention, in one’s own name and on one’s behalf, to exclude the world at*

large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.'

Dispossession

[22] Owusu propounded at page 276 of his text, that time begins to run only where there is adverse possession, and that, that implies two conditions, which are:

' 1. Absence of possession - either as a result of the paper owner being dispossessed, i.e., where a person comes in and drives out the paper owner from possession of the disputed land; or the paper owner's possession having been discontinued, i.e., where a paper owner vacates or abandons or goes out of the disputed property and leaves it vacant; and

2. Adverse possession of the squatter - An intruder has assumed and retained possession of the land for the statutory period before the institution of action.'

In the case of **Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd [1975] QB 94**, the Court of Appeal, Civil Division, held that:

'In order to establish adverse possession of land for a continuous period of 12 years, a claimant had to show that the true owner had discontinued possession, or that he had been dispossessed for the requisite period. Accordingly, mere non-user did not amount to discontinuance of possession, and in order to prove dispossession, the claimant had to establish actual possession on his part...'

Burden and standard of proof

[23] The burden is on the person/persons claiming title by adverse possession, to prove that he/she/they have, in fact, been in sole, undisturbed, undisputed possession, exclusively exercised for the period prescribed by statute. On that point, Anderson J., the judge at first instance, who presided in the case: **Recreational Holdings I (Jamaica) Limited [2012] v Carl Lazarus and The Registrar of Titles [2012] JMSC Civ 165**, at paragraph 18, opined:

'To put it another way, that person would have the burden of rebutting the presumption that the paper owner is in possession. Thus, the person seeking to establish adverse possession must produce cogent and compelling evidence of a single degree of occupation and physical control of the land, undisturbed by others, with the relevant intention to possess, for a period of twelve years or more.'

The learned judge's conclusion in that regard, was never challenged on appeal.

[24] Because of the presumption referred to, any person ordinarily seeking to rebut that presumption, would have to provide to that court, cogent/compelling evidence, effectively rebutting same.

[25] In this case, the claimant has the burden of proof, in respect of her claim, while it is the defendants, who have the burden of proof, in respect of their ancillary claim. In this case, at this juncture, it must be noted that the 1st defendant was granted letters of administration of his late father's estate. This disputed land is still in the deceased's name, and since he is deceased, the presumption of possession by him, no longer obtains. Nonetheless, the claimant must produce evidence, sufficient on a balance of probabilities, to satisfy this court that she has, for the requisite time period, exercised exclusive control over the portion of the disputed land, which she claims to be hers, coupled with an intention by her, during that period of time, to remain in exclusive possession of same. The standard of proof for both the claimant and the defendants, was proof on a balance of probabilities. What must be proven: i. Exclusive possession of the relevant portion of the disputed property for the requisite period of 12 years and ii. The intention to possess same, to the exclusion of others, for that time period. Has the claimant proven that she had exclusive possession of the disputed property for 12 years or longer? To my mind, she has not done so.

Was the claimant in sole, undisturbed, undisputed possession, exclusively exercised for the limitation period?

[26] The evidence indicates that John Passley, deceased, father of the 1st defendant, is the registered sole proprietor of the disputed property. The evidence also indicates that the deceased died intestate. Both the relevant certificate of title and death certificate are before the court. Notably, there is record of a copy Grant of Administration by the court to the 1st defendant. The said copy Grant of Administration was filed on May 11, 2021, and granted on June 8, 2021. Consequently, the registered title for the conflicted property is vested in the 1st defendant, who is named administrator of the germane estate. Therefore, the 1st defendant is legally entitled to deal with the

property, according to the laws of intestacy, in that, he has become the equitable owner of the said property, for the purpose of administering the estate and holds the property, on trust for his late father's estate. That occurred, once he was appointed as the administrator of that estate. On the evidence, there is no dispute that the 1st defendant is no stranger to the contested property. In the 1st defendant's affidavit, which was filed on March 1, 2021, he deponed that he had lived on the contested land since he was a teenager. The claimant also deponed in her affidavit, which was filed on August 31, 2020, that the 1st defendant had always resided in a house on a part of the said contested property, since she was a child. She further gave sworn evidence that she and Junior (Chester Passley) lived on the land together.

[27] The claimant has asserted that she began to exercise all acts of ownership over the disputed property in 1991, after Ishmael Passley had died. Of course, her claim must be weighed against the evidence before this court. The evidence shows that the claimant had paid property taxes for the periods 2008 - 2009 and 2009 - 2010 for the disputed property. There is also evidence that the claimant had entered into a contract with Jamaica Public Service Company Ltd. (JPS) for electricity services on December 19, 2008 for the contested property, and there is an electricity bill, dated August 10, 2018, in the name of the claimant, for the said property. There is further evidence of a receipt for payment of electricity, dated August 14, 2018, in the name of the claimant, for the contested property. She has deponed, in her affidavit, which was filed on February 28, 2022, that she has planted crops, such as banana, breadfruit and plantain, on the contested property.

[28] On the other hand, the 1st defendant has deponed that since the death of his father in 1988, he took control of the disputed land, in its entirety, exercising all acts of ownership on behalf of himself and the other beneficiaries. It is his case that he has always maintained the property, carried out repairs, and granted permission to others, including lessees, to occupy the contested land. He has also deponed that the 2nd defendant, Cameca Passley is his agent for the purposes of the disputed property.

Letter signed by the 1st and 2nd defendants and certified by a JP, bearing the date August 9, 2018, substantiates this claim. There is evidence before the court, which shows that his agent had paid property taxes for the said property for the periods 2019 - 2020 and 2020 - 2021. There is also evidence that a water bill, dated January 18, 2021, was in the name of the 1st defendant.

[29] Both the 1st and 2nd defendants have deponed that they planted a garden behind the house in which the claimant resides. They have also deponed that the family plot is located to the left of the claimant's house, and that, they have free access to same. In fact, it is their case that they have unencumbered access to the entire property at all times, and that, the only area of the disputed property, which they do not frequent, is the house in which the claimant resides. Both the 1st and the 2nd defendants have maintained that the claimant had paid rent to the 2nd defendant in or around 2018. The 2nd defendant, in her affidavit, which was filed on March 1, 2021, has deponed, among other things, that she has constructed and has utilized a chicken coop and rears a goat beside the claimant's house.

[30] It is my view that, since Sitira Passley passed away in 2003, it is highly probable that, if the claimant, had in fact exercised acts of ownership, she was not in a position to exercise all acts of ownership of the contested property, until after Sitira Passley died. Further, when the claimant came to reside with Ishmael and Sitira Passley in 1991, she is said to have been between 11 - 13 years old; thus, she had not yet attained the age of majority. Therefore, my starting point, in ascertaining whether the claimant, had occupied the disputed property for 12 years or more, is the year 2003. The court notes that the claimant filed her fixed date claim form on August 31, 2020; therefore, prima facie, the claimant has, as an adult, occupied the portion of the disputed property that she is claiming, for approximately seventeen (17) years. The question before the court now is whether the claimant's possession of same, was exclusive, during that period of time.

Was the claimant's possession of the disputed property exclusive – Was she in factual possession?

[31] It is my considered view that although the claimant has proven that she was in possession of a portion of the disputed property, she has wholly failed to successfully prove that she was in possession of the said portion of land, without the permission of the Passley family. Notably, there is no evidence that the claimant constructed any fence or other enclosure to separate the portion of land, that she is claiming, from the rest of the disputed property. While, the authorities in this area of law have propounded that the absence of fencing or enclosure is not absolutely necessary or essential, there is no distinct, clear boundary between the portion of land she is claiming, and the rest of the contested land. There is evidence of her having acquired electricity for the portion of the property that she occupies. It is also clear that she had paid property taxes over a two-year period for the contested property. In addition, it is evident that the claimant had entered into a contract (JPS) for electricity services for, at least the portion of the contested property, which she occupies. Further, there is evidence of a receipt for payment of electricity, in the name of the claimant, for the said property. Moreover, the claimant claims to have improved on the board house in which she initially resided by adding more rooms and/or structures to the original house. The valuation report, which is dated July 21, 2020, concerning her house, reveals that it presently consists of three (3) bedrooms, one (1) toilet area, one (1) store room, one (1) kitchen and one (1) verandah.

[32] Whilst it is clear that the claimant has been in occupation of at least a portion of the contested property in excess of twelve years, this court has gone on to determine whether her possession was exclusive. It must be emphasized that mere occupation of property in excess of 12 years, does not necessarily amount to factual possession. In the case of **Thomas Broadie and Donald Broadie v Derrick Allen Civil Appeal No. 10/2008**, paras. 27 & 28, the court opined:

'27. By operation of law, the occupation of land by a squatter amounts to possession. Mrs. Taylor contended that if a squatter is in possession, the true owner cannot be in possession and that the squatter would be entitled to possession. It is perfectly true that a squatter and an owner cannot be in possession simultaneously but this does not mean that a squatter is entitled to possession of the land merely by his occupation of it. Possession, within the context of the Act, carries with it a distinctive and restrictive meaning. There can be no effective possession unless there is factual possession and an

intention to possess. The occupation of land by a squatter which ordinarily constitutes possession does not necessarily amount to possession adverse to the true owner's interest in the land unless or until it is proved that he had dispossessed the true owner by exhibiting an intention to possess it. In fulfilling the possessory requirement under the Act, as shown in JA Pye (Oxford) Ltd. v. Graham (supra), there must be evidence disclosing that a squatter had enjoyed peaceful, undisturbed possession of disputed land for the requisite period, had the intention to possess it and utilized it in the manner in which the true owner would be expected to use it.

28. Therefore, to acquire possession of property by adverse possession means there must be evidence not only to show that the squatter had done so by occupying the land for the period prescribed by the statute but also that he had done so with the intention of holding it "in one's own name and on one's behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of law will allow" per Slade J, in *Powell v. McFarlane* (supra). It follows therefore, that possession can only be assigned to a squatter where it is demonstrably clear that he has legal possession of the disputed property coupled with the intention to possess it.'

[33] The law is clear that "*exclusivity is the essence of adverse possession*", per the ***Pye v Graham case (op. cit.)***. It is therefore not possible in law for an owner of land and an intruder both to be in possession of a piece of land at the same time (***Wallis' Cayton Bay case (op. cit.)***). Based on the evidence proffered by both the claimant and the 1st and the defendants, it appears that the claimant did not have exclusive possession of the portion of the property for which she lays claim. She and the 1st and 2nd defendants have proffered that the 2nd defendant rears chickens and a goat right beside the claimant's dwelling-house, and that, she operates a business (bar) in front of the said house. They have also submitted that they dump waste behind the said house, and that, they planted a garden to the rear of the aforesaid house. It seems as though the 1st defendant was never excluded from any section of the disputed property. In fact, the evidence shows that the claimant and the 1st defendant had always lived concurrently on the conflicted property. Therefore, there is no evidence that the 1st defendant, had, at any time, abandoned the conflicted property, or that he had been dispossessed by the claimant of the said property. There is no evidence by the claimant or her witnesses that she had, in fact occupied a section of the contested land, which is distinct and can be easily distinguished from the rest of the said property, or that the portion of the property, which she has occupied as an adult and as a child, is a large portion of the disputed property. The foregoing suggests that the claimant did not have

sole, undisturbed, undisputed possession, exclusively exercised over any portion of the said property. In the premises, I am of the view that the claimant has not proven, on a balance of probabilities, that she had exclusive possession of the portion of the disputed property, which she is claiming. Therefore, she has not proven that she has been in factual possession of the contested property for the prescribed 12 years.

[34] It is important to note that the claimant, under cross-examination, admitted to the court that she had told her common law spouse that she could not pay five thousand dollars **(\$5,000.00)** per month for the lease for the portion of the disputed property, that she is claiming, but that, she could pay four thousand dollars **(\$4,000.00)**. She further admitted that her spouse paid the 2nd defendant, the 1st defendant's agent, the sum of **\$4,000.00** in August 2018, for the said lease. She subsequently gave sworn evidence that she did not pay for the lease after that payment of August 2018. The claimant gave further evidence that she had received a notice to quit regarding the said property from the 1st and 2nd defendants' attorney-at-law, after she refused to continue to pay for the lease.

[35] Arguably, since the claimant's spouse had paid rent or a lease sum, on his and the claimant's behalf, to the 1st defendant's agent, albeit after more than 12 years had passed, they had acknowledged his (1st defendant) title or ownership of the conflicted property. This act goes to the mental element, which is required to be proven by the claimant, if she is to establish that she had, in fact, adversely possessed the contested premises per the **LAA**.

[36] The claimant claims to have improved the structure in which she resides. Notably though, there is neither evidence of receipts for building materials, labour or otherwise proffered to the court by the claimant to substantiate her claim, nor is there other evidence contrasting what the structure looked like before and after the supposed work was done. Notwithstanding, she has provided a valuation as at June 23, 2020, of the house she is claiming. Per the valuation, the building is described as a single storey detached dwelling of approximately 64.00 square metres. It is further described as

having board walls, adjustable wood louvres and a zinc roof, and as yielding a market price of \$700,000.00. I do not accept the claimant's evidence that she improved the structure, which is commonly described as a board house, in which she has resided for a number of years.

[37] On the other hand, there is evidence before the court that both the claimant and the 1st defendants have paid property taxes and utility bills for the disputed property. The case of ***Gillian Baumgartner-Marik v Agnes Merinda Elliott [2017] JMSC Civ. 58*** is instructive in this regard. In that case, the claimant and daughter of the deceased, Joscelyn Elliott, was executrix of his estate. By way of fixed date claim form, which was filed on the 26th of August 2013, she was claiming against the defendant, Agnes Elliott, the wife of the deceased. She contended that the defendant, a registered joint owner of the disputed property, had been divested of her rights in the said property, i.e., her interest had been extinguished by the operation of law, more particularly the **Limitation of Actions Act ('LAA')**. The claimant claimed that Mr. Elliott enjoyed the disputed property as his own since 1968, when he was abandoned by the defendant, and that, during that time, he was the sole person responsible for paying the various outlays for the upkeep of the property, and enjoyed the profits without interference from the defendant.

[38] In the ***Gillian Baumgartner-Marik case (op. cit.)***, at paragraph 115 of that judgment, McDonald J. (as she then was), opined:

*'In my view, the payment of (1) the mortgage from 1968 to 1970; and (2) the property taxes from 2008 to 2012 are not unequivocal acts which indicate that from 1968 to 2012 Mr. Elliott formed the intention to treat the disputed property as his own. **Although there may be instances in which such payments, coupled with other acts, are indicative of an intention. In other cases, the payment of these obligations is somewhat akin to the payment of utility bills, such as electricity and water. Such payments, without more, can be made by residents of premises without any intention of regarding themselves as being in exclusive possession.**'* (Emphasis Mine)

I am in agreement with the view of McDonald J. (as she then was), especially where the payment of utility bills is concerned. In the case at hand, the claimant did what any reasonable person would do, in ensuring that she had access to electricity and water on

the premises where she lived. These are modern conveniences. Her evidence of the payment of property taxes and utility bills for short periods, without more, do not serve to indicate, much less prove, that she was in exclusive possession of the contested property.

Did the claimant have the necessary animus possidendi?

[39] The second element of possession is the intention to possess or the animus possidendi, in that, the claimant must show that she had the requisite intention to possess the relevant portion of the contested property, and to exclude the world at large, including the paper owner. From the evidence before me, it is clear that the claimant has done certain acts, including the payment of property taxes, the acquisition of and payment for electricity services for the house in which she resides. Her intention to possess to the relevant part of the contested property may be discerned from those acts. However, it must be underscored that from the 1st defendant's evidence and the evidence of the claimant's own witness, it is my view that the claimant has not, on a balance of probabilities, proven that she had formed the necessary animus possidendi. The claimant's witness and daughter, Melissa Gibons, under cross-examination, gave evidence that her mother, the claimant, lives on the said property with the permission of the Passley family. This evidence, in direct contrast with the claimant's evidence, goes to the root of the claimant's credibility.

[40] Another piece of evidence, which suggests that the claimant is less than credible, is her claim that the 2nd defendant sought her permission to construct her (2nd defendant) house and live on the contested property. It does not stand to reason that the 2nd defendant, being the daughter of the 1st defendant, heir and beneficiary to the deceased's estate, would seek permission from a third party to so act. In fact, Dawn Campbell, the claimant's other witness, gave evidence that the claimant's house is situated on the Passley family's burial plot. Noteworthy is that the 1st defendant has, in his evidence, deposed that he has been the one maintaining the contested property, including the burial plot. If the 1st defendant is to be believed, then it would appear that he has had unencumbered access to entire disputed property. The preceding serves to

bolster the view that the claimant has occupied the conflicted property as a licensee, or at least, with the consent of the 1st defendant, and therefore, her occupation was not adverse to the 1st defendant. In addition, the fact that the claimant's spouse had paid rent in 2018 on their behalf, suggests that the claimant did not have the necessary intention to possess the contested property in the capacity of an owner of same. Consequently, the claimant's acts were not unequivocal and affirmative.

[41] It must be emphasized that payment of property taxes, alone, is not proof of ownership or interest in property. In ***Richardson v Lawrence (1966) 10 WIR 234***, at pages 238 and 239, it is noted that payment of taxes does not create an interest in land, nor is it necessarily evidence of ownership of land, as taxes may be paid by anyone, who desires so to do. Further, the tax roll may actually be in the name of someone who has been dispossessed. In that light, payment of taxes, though important, is not decisive of title. It needs to be looked at in conjunction with the other evidence of possession. In the instant case, I have concluded that although the claimant had paid taxes for the disputed property for the periods evidenced, this alone, cannot determine exclusive possession.

[42] The claimant's counsel, in his closing summation, sought to rely on the case of ***The Administrator - General for Jamaica v Zena May Holness [2022] JMSC Civ. 39***, where the court found that Everton Lynch had acquired the disputed property adversely as against the defendant, Zena May Holness. Ms. Holness and Mr. Lynch had acquired the said property, and subsequently, in 1994, Ms. Holness began to travel to the United States for work. They had an arrangement where Mr. Lynch would visit her and the children overseas. In 2006, Ms. Holness went to the property, and saw Ms. Carr and ordered her to leave. In that period, Ms. Holness claimed to have paid the water bill and property taxes. She visited again in 2008, and Ms. Carr was still there. Ms. Holness called the police and did not remain on the property, but she still insisted that she and Mr. Lynch were still a couple. Ms. Holness claimed that she gave Mr. Lynch cash to maintain the house, paid utility bills and taxes, even after those occurrences. Following Mr. Lynch's death, she sought to recover possession of the conflicted property. The undisputed evidence showed that Ms. Holness only visited the property on two

occasions. Ms. Carr's evidence illustrated that Mr. Lynch handled all the financial affairs in relation to the property - he made all the mortgage payments and he paid the property taxes. Further, the evidence indicated that he conducted himself as if he was the sole owner of the said property, to the exclusion of Ms. Holness. He even brought Ms. Carr to live on the contested property while she was pregnant with his child. The case of ***The Administrator General for Jamaica v Zena Holness (op. cit.)*** clearly turned on different facts to the case at bar. That case dealt with one co-owner dispossessing the other per **section 14 of the LAA**, and does nothing to assist the claimant in the case at bar.

[43] Counsel for the claimant also sought to rely on the case of ***Tanya Ewers v Melrose Barton-Thelwell [2017] JMCA Civ. 26***. In that case, Ms. Williams and Mr. Fitzhoborn Thelwell were involved in a common law relationship, and were registered along with Mr. Ian Thelwell (Ian), Mr. Fitzhoborn Thelwell's son, as joint tenants of the disputed property. That was in 1988 and Mr. Thelwell and Ms. Williams were living together at the premises at the time. The couple later separated and Ms. Williams left Mr. Thelwell at the premises. It was unchallenged that Mrs. Barton-Thelwell went to live with Mr. Thelwell at the said premises in 1994 as his common law wife, and that she and Mr. Thelwell married in 2000.

[44] Ian Thelwell died in 1999, and Mr. Thelwell died in 2005. Based on the law of survivorship, Ms. Williams would have automatically become the sole registered proprietor. It was on that basis, that she had a new title for the said premises issued in her sole name. She filed a plaint in the Resident Magistrate's Court for recovery of possession of the premises from Mrs. Barton-Thelwell. Subsequently, Mrs. Barton-Thelwell filed the relevant claim in the Supreme Court. She claimed that Ms. Williams' automatic right to succession had been lost by virtue of Mr. Thelwell's occupation of the conflicted premises, from 1994 to 2005, together with her occupation thereafter, to the exclusion of Ms. Williams, for a period in excess of 12 years. She further claimed that, by virtue of the Limitations of Actions Act, Ms. Williams was barred from taking any action to recover possession of the said property, inter alia. Ms. Williams filed an acknowledgment of service to the claim, but had failed to file a defence. Her plaint in the

Resident Magistrate's Court was adjourned without a date. She died in February 2013, not having filed a defence to the said claim. Ms. Ewers, the deceased's Ms. Williams' daughter, sought to file a defence to Mrs. Barton-Thelwell's claim, among other things.

[45] In her evidence, Mrs. Barton-Thelwell deponed that the disputed premises was home to her and her family, and that, she conducted business there. She further claimed that she and Mr. Thelwell used their earnings from the premises to support their family and advance their interests, and that, none of their earnings was ever claimed by, or shared, with Ms. Williams. She gave evidence that Ms. Williams was 'chased' from the premises by Mr. Thelwell, and that, she received neither benefit from the land by way of rental or any other payment, nor reaped anything thereon or made any claim to it.

[46] The Court of Appeal held, inter alia, that Ms. Williams was excluded and physically dispossessed by the deceased, Fitzhobern Thelwell, during his lifetime, and thereafter by Mrs. Barton-Thelwell from the relevant premises. The court also held that the estate of said Ms. Williams, and any person on behalf of her estate, stand barred, pursuant to the provisions of the ***Limitations of Actions Act***, from pursuing any action or claim against any person or persons, including the claimant, Mrs. Barton-Thelwell, who is beneficially entitled to the premises. The court further held that Mrs. Barton-Thelwell is legally and beneficially entitled to all the interest in fee simple in the premises.

[47] In the case above, the defendant, Mrs. Barton-Thelwell, could prove that she and Mr. Thelwell had expended funds together, collaborated on activities to support their family and advance their interests. There was also clear evidence that she conducted business on the property and that Ms. Williams was excluded from the disputed property and dispossessed. Mr. Thelwell and Mrs. Barton-Thelwell acts were unequivocal, affirmative and certain. That case also dealt with the dispossession of one co-tenant by another. Again, this case did nothing to advance the present claimant's case. To my mind, the case that would serve to buttress the claimant's position is the well-known, often cited ***JA Pye case (op. cit.)***. In that case, the court held, inter alia, that:

'An offer made by a squatter to an owner to pay rent or take a tenancy is acknowledgment of the owner's right to require the squatter to vacate the land (if the limitation period is still running), but it is not inherently inconsistent with the squatter being in actual possession of the land, or with the squatter having the requisite animus possidendi. Once any licence under which a squatter has occupation expires, if that squatter remains in occupation, his possession is capable of being 'adverse'. (Emphasis Mine)

[48] On the other hand, in the **JA Pye case (op. cit.)**, the court discussed at length some relevant factors to be taken into consideration in order to establish sufficient animus possidendi. One of those factors is enclosure and access. In that case, the Grahams had maintained the boundaries of the disputed land, kept their cattle secure and also discouraged others from coming onto the said land. They ensured that no one could get to the disputed land without their consent. In the case at bar, by the 1st defendant's evidence, under cross-examination, he maintained that he had a chicken coop next to the claimant's house for a long time, even before the 2nd defendant came to live at the disputed property. Further, he claims that the garbage heap at the back of the claimant's house is where the garbage is generally disposed of by the occupants of the conflicted land. The claimant, under cross-examination agreed that the 2nd defendant also utilized the garbage heap at the back of her (claimant) house. The preceding suggests that the 1st defendant had access to the portion of the property that the claimant is claiming. Consequently, there was no clear, distinct boundary between what the claimant is claiming and the rest of the conflicted premises. Therefore, enclosure and access are both absent in the case at bar.

[49] According to the **JA Pye case (op. cit.)**, the intention(s) of the paper owner is another relevant factor. In that case, it was found that the claimants had communicated to the Grahams about their future intention for the disputed property. In the present case, the 1st defendant, under cross-examination, maintained that he had advised the claimant that she could continue to live on the contested land until his daughter came to reside there. If the 1st defendant is to be believed, then the claimant's use of a portion of the conflicted premises as her residence, is consistent with his intention for its future use. It must be noted that, while the claimant has rejected the claim that the 1st defendant had communicated his intention to her, her daughter and witness, Melissa

Gibbons, admitted under cross-examination, that her mother, the claimant, lived on the disputed property with the permission of the Passley family.

[50] The **JA Pye case (op. cit.)**, posits a third requirement that a squatter has to establish, in order to ground his claim in adverse possession, which is that the squatter must prove that his possession is adverse to the title owner. In that case, it was found that a *'permission is never "adverse" within the meaning of the Act...if it is enjoyed under a lawful title. If, therefore, a person occupied or used this land by licence of the owner...and his licence has not been duly determined, he cannot be treated as having been in "adverse possession" as against the owner with the paper title.'* The question for this court, now, is whether the claimant may be said to have occupied the disputed portion of the property, she is claiming, under a licence.

Whether an implied licence can defeat an adverse possession claim

Was the claimant occupying the contested property under a licence?

[51] Counsel for the defence has relied on the case of **Seaton Campbell v Donna Rose Brown and Carlton Brown [2016] JMSC Civ. 157** to bolster her position that, the claimant in the case at hand, occupied a portion of the disputed property as a licensee, under an implied licence. In that case, Anderson J dealt with the nature of a licence. In paragraph 29 of that case, Anderson J opined that *'a licence is a mere permission which makes it lawful for the licensee to do what would otherwise be a trespass...Such a licence is merely a defence to an action in tort and confers no estate or interest in land. A licence in connection with land, while entitling the licensee to use the land for the purposes authorized by the licence, does not create an estate in land.'* In the case at bar, the 1st defendant was aware that the Passleys had taken in or acted as caretakers for the claimant, so it appears that he permitted, or at the very least, acquiesced or implicitly consented to the claimant's occupation of the premises. I agree with counsel for the defence that possession is not adverse if it is enjoyed by virtue of a family arrangement or a lease. Regarding the former, she relied on the **Seaton case (op. cit.)** where the court held that the claimant had not acquired a title by adverse

possession in circumstances where he occupied the property by virtue of a licence granted to him by his brother. The court approved the principle that ‘Adverse possession cannot be consensual’, and expressed that ‘the courts have tended...to guard against the possibility that acts founded on mere “amity and good neighbourliness” may ripen into some form of unassailable adverse possession’. I agree with the defence that the arrangement for the claimant to live on the contested property was founded upon amity and good neighbourliness, and as such, do not give rise to adverse possession. That judgment of Anderson J. was upheld by the Court of Appeal in **Seaton Campbell v Donna Rose-Brown and Carlton Brown [2016] JMCA App 35**.

[52] According to **Halsbury’s Laws of England, 5th Edition, 2008, Limitation Periods, Volume 68, paragraph 118**, ‘if an occupier carries out activities on land with the express or implied consent of the owner, the land is occupied on behalf of the owner. Possession of property may be held by one person on behalf of the owner, and their possession will not therefore be adverse’.

[53] The case of **Smart v London Borough of Lambeth [2013] EWCA Civ.1375** is instructive. In that case, the Court of Appeal found, in paragraph 35, that:

‘Where it is sought to imply consent from the circumstances of the case, there needs to be some overt act by the landowner or some demonstrable circumstance from which the consent can be implied...it was irrelevant that the user was aware of the overt act or demonstrable circumstance. It did, however, have to be established that a reasonable person would have appreciated that the user was with the permission of the owner.’

It is my view, based on the principles regarding implied consent outlined in **Smart v London Borough of Lambeth (op. cit.)**, that when the claimant and/or her spouse paid the rent/lease sum in 2018 on their behalf, this was a demonstrable circumstance from which the court could imply that the claimant and her family were living on the contested land, via the implied consent of the 1st defendant, both in his personal capacity initially and then later on, in his capacity as administrator of the deceased’s estate.

Whether the 1st defendant could have given an implied licence to the claimant to occupy the disputed property

[54] It is clear from the claimant's own evidence that she had discussed with her spouse that she could only afford to pay \$4,000 for the lease, and that, her spouse, had, in fact, made that payment in 2018. The evidence illustrates that, in the minds of the claimant and her spouse, the 1st defendant possessed a superior title to the conflicted property. Based on the facts of the case at hand, it appears that the deceased had permitted his brother, Ishmael Passley and Sitira Passley, his brother's wife to occupy the said property. It was Ishmael and Sitira, who took in the claimant and raised her. I am of the view that at all material times, the claimant occupied the disputed premises, with the consent of the 1st defendant, in his personal capacity. Whilst I am satisfied that an implied licence, just as an express licence, given to someone to remain on premises owned by another, will be sufficient to defeat a claim to title, based on the law of adverse possession, I do not think that an implied licence was given to the claimant in respect of the factual scenario, underpinning the matter at hand.

[55] I am of the view that because, after the relevant title owner (the 1st defendant's father) had died, the relevant property was then, beneficially owned by the deceased's estate. The 1st defendant was not appointed as the administrator of that estate, until June 8, 2021. By that time, this claim had already been brought before this court, by the claimant. The 1st defendant had no lawful authority to give anyone a licence to occupy the deceased's property, until when he was appointed as the administrator of the deceased's estate.

[56] In law, unlike an executor, who can lawfully exercise powers related to the administration of a deceased person's estate, once the testator has died, that is not so, with respect to where a person has died intestate and an administrator is later appointed, to administer the deceased's estate. For the latter type situation, the administrator cannot exercise any powers related to the administration of the deceased's estate, until he or she has been lawfully appointed as administrator of that deceased's estate. In that regard, see: **Mobray & Williams [2012] JMCA Civ 26.**

[57] I find that the claimant has not satisfied both elements of factual possession and animus possidendi, which must be present concurrently, in order to successfully ground a claim of adverse possession. In the present case, I find that the claimant, has not proven, on a balance of probabilities, that she dealt with the portion of the contested land that she is claiming, *‘as an occupying owner might have been expected to deal with it and that no-one else has done so’*, per the factual possession element. Moreover, I find that she has not proven, on a balance of probabilities, that she had the animus possidendi to, in her own name and on her own behalf, exclude the world at large, including the owner with the paper title. Consequently, the claimant’s possession has not extinguished the registered title for the contested property, which is vested in the name of the deceased.

Whether the court should order that the Registrar of Titles cancel the existing certificate of title registered at volume 1158 folio 668 of the Register Book of Titles and order that the Registrar of Titles issue a new title with the name of the claimant endorsed as tenant-in-common in equal shares with the 1st defendant

[58] **Subsection (2) of section 158** of the **RTA** states:

‘...In any proceeding at law or equity in relation to land under the operation of this Act, the court or a Judge may, upon such notice, if any, as the circumstances of the case may require, make an order directing the Registrar –

(a) to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order; or

(b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.’

While the court has the jurisdiction to order the Registrar of Titles to cancel an existing certificate of title and to issue a new one, since the claimant has not proven that she has adversely possessed a portion of the conflicted property, no such order will be issued by the court. Even if the claimant had proven to have adversely possessed the portion of the conflicted property, to which she lays claim, in the circumstances of this case, the court, this court should not and therefore, will not order that the claimant and the 1st defendant and/or beneficiaries of the deceased hold the entire contested property as tenants-in-common in equal shares.

Whether the court should order that all legal and/or beneficial interest in the disputed property vests in the 1st defendant and the beneficiaries of the estate of the late John Passley

[59] Regarding the defendants' ancillary claim, it has already been shown that the claimant has no proprietary title or interest in the conflicted property. It follows inexorably, that the court has no challenge in ordering that the disputed property vests in the 1st defendant, in his capacity as administrator of the deceased's estate. The 2nd defendant's ancillary claim though, has not been proven, and I think that it is fair to state that from the onset, it had no realistic prospect of success.

Whether the court should order that the claimant deliver up possession of the disputed land in favour of the 1st defendant and the beneficiaries of the estate of the late John Passley

[60] The 1st defendant is presently the administrator of the deceased's estate, as well as a beneficiary of the said estate. He is son and heir of the deceased. I am of the view that the claimant, whose possession was found to be only a mere possession and not adverse to the 1st defendant and the other beneficiaries of the deceased's estate, should be made to vacate the disputed premises. In the claimant's evidence, she admitted that she lived in a board house, which is screwed onto blocks. Therefore, it does not appear as though the claimant would face any undue hardship in relocating from the conflicted premises with her house, which appears to be a chattel, temporarily affixed to the said land.

Conclusion

[61] I must reiterate that the plethora of cases in the area of adverse possession have served to affirm the three elements outlined in the *JA Pye case (op. cit.)*, which must be sufficiently satisfied, if a litigant is to succeed on a claim of adverse possession. In the circumstances of this particular case, the fact that the 1st defendant did not have sufficient factual possession and the requisite intention to possess, she could not prove that she had occupied the portion of the disputed property, adverse to the 1st defendant and the other beneficiaries of the deceased's estate. Therefore, she has failed to prove

that her possession was sole, undisturbed, undisputed possession, exclusively exercised by her, for 12 years or more.

Disposition

[62] The court, therefore, now orders as follows:

1. The orders sought by the claimant, by way of fixed date claim form, which was filed on August 31, 2020, are denied.
2. All the legal and/or beneficial interest in the property located in Drapers, Port Antonio, in the parish of Portland, described as all that parcel of land containing by survey, twenty-eight perches and two-tenths of a perch and comprised in the certificate of title registered at volume 1158 folio 668 of the Register Book of Titles, the subject property, vests in the 1st defendant and the other beneficiaries of the late John Passley's estate.
3. The claimant, and all who reside with her, shall vacate and deliver up possession of the portion of the subject property, which she/they currently occupy (ies) and shall leave the subject property altogether, within 90 days of the date of this judgment order.
4. Costs of the claimant's claim against the 1st and 3rd defendants' ancillary claim, are awarded to the 1st and 3rd defendants, and such costs shall be taxed, if not sooner agreed.
5. As regards the costs of the claimant's claim against the 2nd defendant and the 2nd defendant's ancillary claim, the claimant and the 2nd defendant shall each bear their own costs.
6. The defendants shall file and serve this order.

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Hon. K. Anderson, J.