

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2006-00015

BETWEEN

BRYANT SAMUEL

CLAIMANT

AND

PATRICK BONAPARTE

1ST DEFENDANT

AND

CLIVE STEPHENS

2ND DEFENDANT



Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. S. Roberts instructed by Mr. A. Roberts

For the First and Second Defendants: Mr. F. Scoon instructed by
Mr. T. Cunningham

JUDGMENT

[1] BASIC FACTS

This case hinges upon whether a person can seek the court's favour when in flagrant breach of an existing Order of the said court. The Claimant Mr. Bryant Samuel claims against the Defendants, Mr. Patrick Bonarparte and

Mr. Clive Stephens, possession of a parcel of land. This land is situated in St. Ann's, a suburb of the capital city Port of Spain. In addition, Mr. Samuel seeks damages for trespass and an injunction against both Mr. Bonaparte and Mr. Stephens.

[2] Mr. Bonaparte and Mr. Stephens defend this claim by stating that Mr. Samuel is not the legal owner of the parcel of land under dispute. They claim that the Certificate of Title held by his predecessor in title, Ms. Nellie Roberts, was procured by fraud. They filed a counterclaim seeking various reliefs.

[3] **PROCEDURAL HISTORY**

Mr. Bonaparte is no stranger to proceedings concerning these lands as they have been the subject of three (3) previous High Court Actions. These actions are:

- (i) *High Court Action No. 205 of 1966 between Cyrus Bonaparte (Legal Personal Representative of Andrew Bonaparte, deceased) –vs- Nellie Roberts*
- (ii) *High Court Action No. 4974 of 1987 between Nellie Roberts –vs- Patrick Bonaparte*
- (iii) *High Court Action No. 3530 of 1987 between Nellie Roberts –vs- Theophilus Bonaparte¹*

In the High Court Action No. 4974 of 1987, The Honourable Mr. Justice Hamel-Smith struck out Mr. Bonaparte's defence of fraud as well as his counterclaim in that matter.

[4] In a decision dated 26th November, 2008, I had cause to state quite categorically,

An examination of the Defence reveals that the Defendants insist on traversing ground already covered in the three

¹ Witness Statement of Bryant Samuel dated 30th April, 2009.

*judgments obtained in this court, none of which have been appealed. They have simply ignored the effect and meaning of these judgments and hope to re-engage the court in issues already settled. That is not permissible.*²

This being said, the Defence, already having been pronounced upon by Hamel-Smith J., would not stand in this matter. As such, the only issue for trial is, whether Mr. Samuel's predecessor's title had been extinguished at the time of the transfer to him in 2005, a live issue in the counterclaim. I then gave directions on the continuance of this matter.

[5] **COUNTERCLAIM**

Mr. Bonaparte filed a counterclaim in this action in which he claims special damages in the amount of \$75,069.00 for the cost of the replacement of a house, furniture and crops he claims were destroyed by Mr. Samuel. He also claims mesne profits in the amount of \$27,200.00. Mr. Bonaparte requests that the Court grant him a declaration that he is entitled to possession of the disputed lands and prays for:

- (j) *Damages for trespass;*
- (k) *Damages for nuisance*
- (l) *Exemplary and or Aggravated damages*
- (m) *Interest on all damages, if any, awarded at the rate of 12% per annum being the statutory rate of interest from the 21st day of June, 2006 being the date when the Claimant unlawfully entered upon and damaged the Defendants chattel and goods and created a nuisance by destroying the Second defendants growing crops.*
- (n) *Costs*

² CV2006-00015. **BRYANT SAMUEL V. PATRICK BONAPARTE, CLIVE STEPHENS.** PARA. 7.

(o) *Such further and or other relief as to the Court may seem just and equitable.*³

[6] **DEFENCE TO COUNTERCLAIM**

Mr. Samuel defended the allegations from Mr. Bonaparte by denying that the disputed lands were ever owned by Mr. Bonaparte or any of his predecessors. Mr. Samuel noted that no rents were ever paid to Mr. Bonaparte, but instead to Ms. Nellie Roberts, Mr. Albert Blake or himself. Mr. Samuel also denied that Mr. Bonaparte was ever able to exercise any control or authority over the disputed lands, and has failed at two attempts to construct a dwelling house on the parcel, as the structures were removed under the instruction of Mr. Albert Blake, Mr. Samuel's predecessor in title. He maintained that the counterclaim should be "*struck out as being frivolous and vexatious*"⁴.

[7] **EVIDENCE OF PATRICK BONAPARTE**

In dealing with the sole issue determined by the Court, paragraphs 2 to 11 and paragraphs 14 to 26 of Mr. Bonaparte's witness statement have been struck out.

[8] Mr. Bonaparte claimed that he received permission from his uncles Mr. Fitz Ryan and Mr. Tomlinson Bonaparte to enter the lands owned by Mr. Andrew Bonaparte "*in or about October 1985*"⁵. He alleged that at that time he entered the disputed lands there were four existing tenants who all claimed to be tenants of Nellie Roberts. Mr. Bonaparte stated that he informed them that he was the owner of the lands. He stated,

I then proceeded to cut, clear and plant about a two-acre portion of the land, planting sweet peppers and other short crops as well as bananas, and yams and other medium

³ Counterclaim. Para. 44. Filed Oct. 8, 2009.

⁴ Defence to Counterclaim.

⁵ Witness Statement of Patrick Bonaparte. Para. 27. Filed on Jul. 13, 2009.

*crops. I continued to cut and clear these lands until the starting of this present case in 2006, when I gave an undertaking.*⁶

Mr. Bonaparte admitted that in 1987 Nellie Roberts initiated an action against him which was decided in 1988. He noted

*the Honourable Justice Hamel-Smith as he then was ruled against me. Notwithstanding the judgment, I have remained in undisturbed possession of the parcel of land until the filing of the claim by the Claimant herein.*⁷

[9] Mr. Bonaparte claimed he paid land and building taxes for his dwelling house which is on the disputed lands, received a water connection from WASA after proving ownership through the Assessment Roll A44, and has also been receiving a T&TEC connection since 1986.⁸ Mr. Bonaparte noted that in 1993 the Assessment Roll was changed to reflect Nellie Roberts as the owner of the parcel of land, and he filed a complaint with the Office of the Ombudsman. He stated that the Ombudsman,

*conducted certain investigations and as a result the Assessment Roll was again adjusted to show that Nellie Roberts only acquired a part of the lands that were formerly registered in the Warden's Office in the name of Andrew Bonaparte*⁹.

Additionally, Mr. Bonaparte claimed that Ms. Shirley Hinds has been his tenant on the disputed lands since 1988 and he continues to receive payment of rent.

⁶ Id. at para. 28.

⁷ Id. at para. 29.

⁸ Id. at paras. 30-32.

⁹ Id. at para34.

[10] **EVIDENCE OF CLIVE STEPHENS**

In his witness statement, Mr. Stephens stated that he has always known the disputed parcel of land to belong to Mr. Bonaparte and his family. He informed the Court that he is currently married to Mr. Bonaparte's daughter and had been visiting her throughout the previous ten years at her home on the disputed lands. In paragraph 4 of his statement he claims,

On or around the year 2000, Mr. Patrick Bonaparte, my father-in-law, the First Defendant herein, gave Nicole and I a parcel of land with a garden shack to live in, which I renovated. I began the renovations in 2002 and planted up the land surrounding the shack. The house was completed in 2005. During the period 2002 to 2005 the structure was occupied by me and my family.¹⁰

Mr. Stephens stated that in June of 2005 a bailiff named Mr. Kelly Andrews came to break down the house. He stated that Mr. Andrews was unable to show him any authorization papers for the removal. Mr. Stephens alleged that Mr. Samuel, his two brothers and his father then came onto the property and threatened Mr. Bonaparte stating that he would "chop off his hand if he did not get off his land." On the following day, Mr. Andrews returned with police officers and finished demolishing the house. Mr. Stephens stated that he was served with the claim form in January 2006.

[11] **CROSS EXAMINATION OF PATRICK BONAPATRE**

Upon cross examination, Mr. Bonaparte confirmed that he had knowledge of the decision by Hamel-Smith J. and accepted the order handed down by the Learned Judge. He stated, "Hamel-Smith J. told me that Nellie Roberts is the true owner of the land. If he told me that I was living on Nellie Roberts land I would not leave there." Mr. Bonaparte confirmed that

¹⁰ Witness Statement of Clive Stephens.

Hamel-Smith J. struck out his defence and counterclaim in the 1987 matter between Nellie Roberts and himself. During his cross examination, Mr. Bonaparte stated that Hamel-Smith J. *“gave him a way to deal with the matter”* and he did this by changing lawyers. When Mr. Bonaparte was questioned as to why he did not act upon Hamel-Smith J.’s order he stated in contradiction of his earlier statements that, *“it is my belief that the Judge gave me judgment in that case and not Nellie Roberts and the matter was finally dismissed.”*

[12] Attorney for Mr. Samuel, Mr. Roberts, noted that Mr. Bonaparte failed to provide the Court with any supporting documents such as electrical bills, land taxes or WASA bills. In response to this, Mr. Bonaparte informed that he is currently owing WASA \$17,0000.00 and that he is facing another case. Mr. Bonaparte was also asked why he did not put the Assessment Roll before the Court, but he was unable to provide any response. Additionally, Mr. Bonaparte informed the Court that he did not place his complaint to the Ombudsman before the Court because he has *“a case in 2005 before the court”* and has to *“be careful of what I am doing.”*

[13] When cross examined regarding the planting of crops on the land, Mr. Bonaparte stated that he had *“people working for him”*. He cited this as the reason he was taken to Court in a matter that ended in 2010. Mr. Bonaparte informed the Court that he *“control[s] all the land in St. Ann with the Bonaparte name”* and has *“land in San Fernando too”*. Mr. Bonaparte proceeded to inform the Court that he owned lands all over Trinidad, and would not be displaced if he were required to move. He stated, *“if I have to move I will be rich. I is ah dreamer.”*

[14] **CROSS EXAMINATION OF CLIVE STEPHENS**

Mr. Stephens testified that he is married to Mr. Bonaparte’s daughter and had been living with the family since 2000. He stated that he initially lived

in the house with Mr. Bonaparte, but then moved to a garden shack on the property. He claimed that to his knowledge, the land was owned by Mr. Bonaparte, and he was currently living on the land through the permission of Mr. Bonaparte.

[15] When questioned on if he would move should there be a judgment against Mr. Bonaparte, Mr. Stephens admitted that he would have no other choice. This witness offered no additional evidence.

[16] **EVIDENCE OF BRYANT SAMUEL**

In his witness statement filed April 30, 2009, Mr. Samuel informed the Court that he purchased the disputed lands from Mr. Albert Francis Blake on June 23, 2005 via Memorandum of Transfer No. 78 of 2005. Mr. Samuel noted that he was aware of the High Court actions against Mr. Bonaparte and stated,

the Judge pronounced Judgment against the Defendant and/or his predecessors in title and in favour of the Claimant's predecessor in title from whom the Claimant purchased the said parcel of land.¹¹

Mr. Samuel stated that after signing of the Agreement for Sale on September 22, 2004, Mr. Albert Francis Blake attempted to have a survey carried out but the surveyors were "*physically and verbally abused by the First Named Defendant*"¹² As a result of this abuse, the surveyors were forced to return on November 25, 2004 so as to complete the survey. Mr. Samuel also stated that he was informed that Mr. Bonaparte attempted to build on lands which did not belong to him on two separate occasions but he was not personally involved in either of those situations.

¹¹ Affidavit of Bryant Samuel. Para. 3. Filed on April 30, 2009.

¹² Id. at para. 4.

[17] Mr. Samuel noted that in recent times he and his family were the recipients of numerous threats from Mr. Bonaparte. He also noted that Mr. Bonaparte was and continues to be fully aware that he is flouting the judgment of the High Court. This he exhibited via an article in the TNT Mirror dated January 21, 1994 in which he stated, *“I then took the matter to court claiming ownership but I lost on the grounds that a RPO Deed is unbeatable”*. Additionally, Mr. Samuel stated that in one of Mr. Bonaparte’s threat he stated, *“it now start because Ralph Pierre take me to the High Court and win, but still he cyar move meh. Dey get judgments against meh and still cyar move meh.”* Mr. Samuel stated that he initiated several actions in the Port of Spain Magistrate Court against Mr. Bonaparte, but has not pursued them in light of the current High Court Action. In paragraph 16 of his affidavit, Mr. Samuel recalled that as a child he was forbidden from going anywhere near the Bonaparte family as there were constant arguments concerning ownership of the disputed lands.

[18] Mr. Samuel informed the Court that prior to, and since his purchase of the land, the majority of the land has remained free of any structures or cultivation¹³. Mr. Samuel also denies that any of the tenants on the land pay rent to Mr. Bonaparte. According to Mr. Samuel, subsequent to and in violation of the Court Order of the Honourable Madame Justice Pemberton on January 25, 2006, Mr. Bonaparte continued to harass Mr. Samuel and his family¹⁴. Mr. Samuel also stated that his family receives water from a 200 feet hose which is connected to a nearby stand pipe, or from their neighbours the Rambaran’s. He notes that his family has never received a water connection from Mr. Bonaparte.

¹³ Id. at para 21.

¹⁴ Id. at para 27.

[19] **CROSS EXAMINATION OF BRYANT SAMUEL**

On October 29, 2009, Mr. Samuel presented himself for cross examination. Mr. Samuel stated in his testimony that he was always aware of the contention regarding the land which he purchased from Nellie Roberts and that he was aware of Mr. Bonaparte's presence on the land. When questioned of his knowledge of the existence of Andrew Bonaparte, Mr. Samuel stated, "*I never heard of Andrew Bonaparte until the beginning of this matter.*" Attorney for the Defendants highlighted that Mr. Samuel's affidavit at paragraph 16 referred to the same Mr. Andrew Bonaparte. Mr. Samuel admitted that he stated his ignorance of Andrew Bonaparte in error and stood corrected. At this point Attorney for the Defendants, Mr. Cunningham, stated that he was unable to continue. Cross examination of Mr. Samuel recommenced on March 24, 2011. Mr. Samuel admitted that there was an existing conflict between Mr. Bonaparte and his father regarding the land which is currently at issue. Mr. Samuel recalled that Mr. Bonaparte began to reside on the land in or around 1988. He however had no recollection of Mr. Bonaparte planting or maintaining any crops on the land.

[20] Mr. Samuel noted that Mr. Stephens began living with Mr. Bonaparte in or around 2003 prior to his purchase of the land in 2005.

[21] **CLAIMANT'S SUBMISSIONS**

Mr. Roberts submitted that Mr. Bonaparte would fail in this claim for several reasons. Firstly, there is an existing issue of *res judicata* evident from the judgment of Hamel-Smith J. and the other related matters concerning the disputed lands¹⁵. Several cases which highlighted the issue of *res judicata* and abuse of process were submitted¹⁶.

¹⁵ Claimant's Written Submissions. Para. 4. Pg. 2. May 25, 2011.

¹⁶ **HENDERSON V. HENDERSON**. ALL ER 1843-60.

RAMHARRY GARIBDASS & ORS. V. HAROLD SOOKHAN. HCA NO. S-2001 OF 1992.
THOMAS V. AG. WIR 39. PG. 372 AT PG. 380.

[22] Secondly, the issue of title under the **REAL PROPERTY ORDINANCE (RPO)**¹⁷ is one which would fail, due to the fact that Mr. Samuel's title is considered "indefeasible". Mr. Samuel possesses a Certificate of Title which is registered under the **RPO** which is "*an assertion to all of the proprietor's interest in the land*"¹⁸. Mr. Roberts submitted that,

*The conjoined effect of section 141, 142 and 143 of the RPO is that, save in the case of fraud, the grant of the certificate of title shall be conclusive evidence that ownership of the lands described thereon is vested in the person described as the proprietor in the certificate of title and that no action for the recovery of any land shall lie against the registered owner has obtained such title through fraud.*¹⁹

[23] Thirdly, with regard to the counterclaim, Mr. Roberts query the sustainability of Mr. Bonaparte's pleaded case, as he stated, "*there are no such lands*" which fulfils the requirements necessary for the satisfaction of relief prayed at (a), (b), (c) and (d)²⁰. It is submitted that the lands to which Mr. Bonaparte refer "*are either imaginary or missing*", or are certainly not the disputed lands.²¹ Mr. Roberts noted that Mr. Bonaparte was bound by his pleaded case and as such the claim should be dismissed.

[24] Fourthly, Mr. Roberts sought to question the viability of Mr. Bonaparte's claim for adverse possession of the disputed lands. It is submitted that Mr. Bonaparte cannot expect to gain from his wrongful behaviour as "*an individual who knowingly is aware of a judgment for possession made against him and not withstanding same remains on some portion of the*

¹⁷ REAL PROPERTY ORDINANCE. CHAP 27 NO. 11.

¹⁸ Claimant's Written Submissions. Para. 19.

GIBBS v. MESSER [1891] AC 248, 254 (per Lord Watson).

¹⁹ Claimant's Witten Submissions. Para. 20.

²⁰ Id. At paras. 23-26.

²¹ Id. At para. 28.

*land in defiance of the said order.*²² He reminded the Court that Mr. Bonaparte would have to convince the Court that “time” would have started to run from the day after the order of Hamel-Smith J. Mr. Roberts noted that “*equity will certainly not recognize any time when the First Named Defendant remained on the lands in obstinate defiance of the Court’s ruling of which he had full knowledge*”²³. He argued that this practice would be against public policy and the administration of justice, and would constitute an abuse of process. Mr. Roberts claimed that the Court should maintain the status quo in the guiding principle of public policy; *ex dolo malo oritur actio*, that being that the Court will not aid anyone who’s cause of action stems from an illegal or immoral act²⁴.

[25] Additionally, Mr. Roberts submitted that Mr. Bonaparte has failed to satisfy the requirements necessary to prove title by way of possession. This required,

- (a) *That he was in continuous occupation of the subject property for at least 16 years;*
- (b) *That there was in fact a defined parcel of land;*
- (c) *That the possession was adverse, that is not with the consent of the true owner;*
- (d) *That the possession was undisturbed and indeed exclusive;*
- (e) *That the possession was accompanied with an animus possidendi*²⁵

He argued that Mr. Bonaparte failed to meet all five requirements necessary to prove adverse possession. Mr. Roberts submitted that Mr. Bonaparte has not demonstrated that he accumulated 16 years of continuous occupation on the disputed land as it is unclear where and for

²² Id. At para. 34.

²³ Id. At para. 36.

²⁴ Id. At para. 37.

²⁵ Id. at para. 44. See **CHANDRA DOLLY V. RAMNARACE SOOKOO. CV 2005-00085**

what period he resided on the house spot. Additionally, Mr. Bonaparte submitted no evidence of possession of the disputed lands such as utility bills, which is necessary to demonstrate possession.

[26] It is submitted that Mr. Bonaparte was a trespasser, and as such, Mr. Stephens could not have gained any interest in the land through Mr. Bonaparte. Consequently, Mr. Stephens would also be deemed a trespasser and would not be able to benefit from his illegal actions. This is compounded by the fact that neither Mr. Bonaparte nor Mr. Stephens submitted any evidence of damage suffered by them through the actions of Mr. Samuels.

[27] It was also submitted that in addition to his inability to satisfy the requirements of adverse possession, Mr. Bonaparte has not demonstrated that he is a credible witness. Mr. Roberts highlighted that this was demonstrated through his “*manner and demeanour*” when being cross examined.²⁶

[28] **DEFENDANTS’ SUBMISSIONS**

Mr. Cunningham submitted that Mr. Bonaparte has been in possession of the disputed parcel of land for a time exceeding the 16 years required by the **REAL PROPERTY LIMITATION ACT**²⁷. He submitted that since the 1987 action, Mr. Bonaparte has been in undisturbed possession of the land²⁸. Mr. Cunningham noted that because the injunction in HCA No. 4974 of 1987 restrained,

The Defendant (the First Defendant herein) from constructing, erecting, enlarging or continuing to construct

²⁶ Id. at para. 47.

²⁷ Ch 56:03.

²⁸ Written Submissions Filed Pursuant to the Order of Madame Justice Pemberton.

*erect or enlarge a dwelling house or any other structure on the said parcel of land*²⁹.

It is submitted that this specific phrasing of the injunction does not disturb Mr. Bonaparte's possession of the lands as it did not order that he vacate the land.

[29] Mr. Cunningham submitted that Mr. Samuel did not provide any evidence that his predecessor in title ever disturbed Mr. Bonaparte's title, or that Mr. Bonaparte ever abandoned the disputed parcel of land. It is submitted that Mr. Bonaparte remained in undisturbed possession of the disputed parcel of land. Mr. Cunningham submitted that as a result of this undisturbed possession he surpassed the 16 years requirement for adverse possession. He supported his submission by referring to Section 3 of the **REAL PROPERTY LIMITATION ACT**. Mr. Cunningham submitted to the Court that Mr. Samuel's title was extinguished in 2003.

[30] **LAW**

The issue to be determined falls within the ambit of Sections 3 and Section 22 of the **REAL PROPERTY LIMITATION ORDINANCE (RPLO)**³⁰. Section 3 of the Ordinance states,

No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action,

²⁹ Id.

³⁰ Ch.5 No.7 1950.

*shall have first accrued to the person making or bringing the same.*³¹

This Section sets out the minimum period for which an adverse possessor must be in possession of the lands before an action may be filed by him for ownership of the adversely possessed lands.

[31] Section 22 states,

*At the determination of the period limited by this Ordinance to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished*³².

This Section informs that once the determinative period has passed all the rights of the original owner to bring an action or collect any rents he may have been owed, are extinguished. The owner would essentially be out of time in favour of the adverse possessor. It must be emphasised that the Limitation statutes do not create property rights.

[32] **ANALYSIS**

In the matter at bar, it is vital to reiterate that the sole issue for determination is “*whether the Claimant’s predecessor in title’s title had been extinguished at the time of the transfer to him in 2005*”³³. To determine the validity of the title existing in 2005 I must take into consideration the previous matter, H.C.A. 4974 of 1987 which came before this Honourable Court. At the conclusion of that matter, Hamel-Smith J. unreservedly ruled against Mr. Bonaparte, declaring Nellie

³¹ Id. at Sec. 3.

³² Id. at Sec. 22.

³³ **BRYANT SAMUEL v. PATRICK BONAPARTE AND CLIVE STEPHENS** CV2006-00015. Reasons for Decision. Para. 8. Nov. 26, 2008.

Roberts the rightful owner of the parcel of land when he struck out Mr. Bonaparte's defence and counterclaim. The learned Judge stated,

If the defendant persisted in that defence I was prepared to have the 'corpus' produced in court. The defendant did not seem to pursue this plea thereafter. If he does so intend, however, I hereby order that the plaintiff attend court tomorrow morning. That should end the matter.

Unless attorney for the defendant wishes to pursue the defence in paragraph 9 (in which case I shall stand the matter over to tomorrow morning) the defence and counterclaim is struck out and the defendant shall pay the costs of the summons³⁴.

Mr. Bonaparte did not seek to set aside the order nor did he appeal it. He simply alleges that he remained on the land armed with the knowledge that his actions were in contradiction of the Court ruling in an attempt to claim ownership through adverse possession and I daresay in contempt of the Order of the court.

[33] In order for time to begin to run in favour of the person claiming adverse possession, the previous owner must be dispossessed of the land. Wylie asserts the following:

The general conclusion arrived at is that a person claiming title by adverse possession must show either dispossession of the owner of the land or discontinuance or abandonment of possession by him followed by possession by the claimant.³⁵

There was no attempt made by Mr Bonaparte to produce documentary evidence that he possessed disputed lands for nineteen (19) years as he

³⁴ NELLIE ROBERTS V. PATRICK BONARPARTE. HCA NO. 4974 OF 1987. PG. 7

³⁵ The Land Laws of Trinidad and Tobago. J.C.W. Wylie. Para. 25.11. Pg. 597.

positively asserted. Thus not much weight can be attached to his viva voce evidence in support of the assertion that Mr Samuel's predecessor in title's title has been extinguished and therefore he cannot maintain a defence to this counterclaim. Be that as it may, I shall continue.

[34] Even if I believe that Mr Bonaparte was in possession for the period of time to amount to a finding adverse to rights of Nellie Roberts, Mr Samuel's predecessor in title, I pose the following:

Could acts of "dispossession" in this context include deliberate flouting of a Court Order? I think it would be against public policy to extend the bounds to that limit.

[35] Mr. Bonaparte brought no evidence to show that Mr Samuel's predecessor in title had discontinued use of the land and had in fact abandoned possession of it. It is evident from the evidence that Ms Nellie Roberts and her successors in title have been in continuous possession of the land.

[36] Mr. Bonaparte has failed to provide any evidence either of his own or of any witness save Mr Stephens (who I shall deal with shortly) to show that Mr. Samuel's predecessors in title acted in any manner which would have been detrimental to the possession of their title. In fact, by all accounts, Mr. Samuel's predecessors in title acted contrary to this theory and attempted to secure their interests on several different occasions. This is evidenced by the High Court actions initiated by Nellie Roberts, and the fact that she secured the Certificate of Title for the lands and moreover sold the lands to Mr Samuel. Mr. Bonaparte's inability to demonstrate to the Court that this abandonment occurred leaves this limb of the case unsatisfied.

[37] **CREDIBILITY**

In my view, Mr Bonaparte has demonstrated illogical rationale. In his evidence Mr. Bonaparte admits he understood the ruling of Hamel-Smith J., yet he proceeded with his action in the belief that the learned Judge ruled in his favour. It is this illogical rationale which puts the credibility of Mr. Bonaparte into question. On a balance of probability I am inclined to believe Mr. Samuel's version of the events, as he has demonstrated that he is a more credible witness. It is clear to me that Mr. Bonaparte is attempting to circumvent the law through his rogue actions. He has flouted the Order of Hamel-Smith J. of which he is fully cognisant of, and is now attempting to put Mr. Samuel out of possession of his lands through his claim of adverse possession. However, I must concur with Mr. Roberts on this issue and note that the Court will not encourage nor condone Mr. Bonaparte's defiant behaviour. In claiming equity, he must come to the table with clean hands. Mr. Bonaparte has not done so. He is attempting to reap the benefits of justice from an unfair, unjust and illegal action. In his mind, he has "waited out" the statutory sixteen (16) year period determined by Section 3 of the **REAL PROPERTY LIMITATION ORDINANCE** and now mistakenly believed that he would have succeeded in gaining possession of the lands. In reality, Mr. Bonaparte has been and from all accounts continues to be in contempt of Court. This cannot and does not give him a right to claim title by adverse possession.

[38] The effect of Section 22 of the **RPO** on the instant matter is that **if** Mr. Bonaparte did indeed have a valid claim in adverse possession, then Mr. Samuel would have been unable to claim for rents or any other profits he would have received from the lands. Mr. Samuel's predecessor in title's title would have been extinguished after the determinative period of 16 years. Mr. Samuel would have received an empty paper title and would not have been able to collect rents from his tenants and bring this action

against Mr. Bonaparte. This is not the case. Mr. Samuel, to the contrary, received a good and marketable title from his predecessors in title, allowing him to collect rents from his tenants unencumbered and to also bring this action in High Court for possession of the portion of his lands which is being occupied by Mr. Bonaparte in defiance of Hamel-Smith J.'s ruling. I must reiterate that even if I found that Mr Samuel has an empty title, that could not and does not advance Mr Bonaparte's claim to title by adverse possession.

[39] **MR STEPHENS**

The evidence gleaned from Mr. Stephens provided no assistance to Mr. Bonaparte's claim as Mr. Stephens admitted that he was residing on the property based on the statement by Mr. Bonaparte that he owned the property. He may have been living there at the behest of Mr Bonaparte and paying rents to him. The legal relationship existing between them did not constitute a tenancy connected with the land. Mr. Bonaparte was not the rightful owner of the lands. In any event, I do not believe this since I do not believe that Mr. Stephens was paying any rents to Mr Bonaparte or anyone else. Additionally, Mr. Stephens had only been residing on the lands for 2 years prior to the filing of the action. His evidence was not helpful to the claim that Mr Bonaparte was an adverse possessor. Mr. Bonaparte claimed that a woman named Shirley Hinds was a tenant who had been paying him rent for a consistent period of time. Yet it should be noted that Mr. Bonaparte failed to present Ms. Hinds to the Court as a witness in his favour. Mr. Bonaparte has also failed to provide the Court with any other additional witnesses for cross-examination who may have been able to attest to his undisturbed possession of the lands.

[40] Mr. Bonaparte has evidenced to the Court that he maintained a presence on the disputed lands. Evidence given by all three witnesses, Mr. Bonaparte, Mr. Stephens and Mr. Samuel confirm that he had been

residing on the lands in the area for several years. However, other than being able to show that he resided on the disputed lands, Mr. Bonaparte can show nothing that would give him a legal right to ownership of the lands, the subject matter of this case. In addition to the lack of evidence of an adverse “entry” onto the disputed lands, Mr. Bonaparte failed to provide any supporting documentation of his alleged long term possession of this land. He evidenced no utilities bills or taxes paid with respect to this land to assist in showing his alleged long term possession of the lands.

[41] **COSTS**

This matter has been trudging through the Judicial System since January 4, 2006. It is now 2012 and Mr. Samuel is still awaiting resolution of his matter. It is evident that the Defendants have dragged their feet in dealing with this matter, thus increasing costs to both parties. The matter initially came to the Court by way of Injunction on January 4, 2006. A Defence and Counterclaim was filed on April 4, 2008, more than 2 years after the injunction was filed. The matter was originally set for Trial on July 14, 2009. Unfortunately, Mr. Scoon did not appear in Court on this day to represent his client, and Mr. Cunningham was unprepared to do so. As a result, the Court ordered that Mr. Bonaparte pay Mr. Samuel’s cost for the day in the amount of \$7,500.00. Additionally, Mr. Scoon was ordered to show cause “*why a Wasted Costs Order should not be made against him for full sum of the Defendants’ Assessed Costs*”³⁶. The trial was adjourned to October 21, 2009.

[42] On the morning of October 21, Mr. Scoon once again failed to appear. The Court was informed that he was unwell, however no medical was produced. Mr. Cunningham proceeded to cross-examine Mr. Samuel, but he was unable to complete this exercise due to an illness he was also experiencing at the time. The trial was further adjourned to November 5,

³⁶ Order. July 14, 2009. Para. 4.

2009. On the morning of November 5, 2009, Mr. Scoon submitted to the Court that Mr. Bonaparte would pay the amount of \$2,500.00 in costs to Mr. Samuel, which he was liable to pay since 2007, within 10 days. On December 3, 2009, significantly outside of the 10 day period, Mr. Bonaparte finally complied with the Orders of this Honourable Court and paid all outstanding costs to Mr. Samuel, in the amount of \$10,000.00. A Wasted Cost Order against Mr. Scoon in the amount of \$4,500.00 was ordered on December 1, 2009 as he failed to show cause why he should not be personally sanctioned for delay in the trial of the matter. On November 23, 2011, the trial resumed.

[43] In this judgment, I propose to deal with the costs of the claim, which went against Mr Bonaparte and the Counterclaim, which was tried and went against Mr Bonaparte as well. The first Order was as a result of a procedural decision, so that the Assessed Costs regime is applicable to the quantification of costs.

[44] In relation to the Counterclaim, I have considered the excessive delays caused by the Defendants and their Attorneys, but I am constrained by the provisions of Part 67.5. The costs of the counterclaim are to be assessed on the prescribed scale. The value of this claim is the value placed on it by the Defendant/Claimant on the counterclaim. This amount stands at \$102,269.00. The costs payable by Mr Bonaparte and Mr Stephens are therefore \$18, 454.00.

[45] **CONCLUSION**

In conclusion I find the following:

- (1) It has been evidenced to the Court that at the time Mr. Samuel purchased the disputed lands, his predecessor in

title's title was not extinguished. In other words Mr Samuel acquired a free and clear title.

- (2) Mr. Bonaparte was unable to show that his "entry" unto the disputed lands gave him a right to claim title by Adverse Possession in that he could not show that he dispossessed the title holder when he allegedly entered the land in 1987.
 - (3) Mr Bonaparte cannot pray in aid any Limitation Statute to say that Nellie Robert's title was extinguished.
 - (4) Equity will not allow a statute to be used as an instrument of fraud or to facilitate an illegality or deliberate flouting of a Court Order which has not been appealed or set aside.
 - (5) In any event even if Nellie Robert's title extinguished this cannot create a title in Mr Bonaparte who admitted that he accepted Hamel-Smith J's order that Nellie Roberts is the owner of the land.
- [46] During the time from the end of the trial to the writing of this judgment, the court's registry was visited with Committal Order filed by Mr Samuel against Mr Bonaparte. Mr Samuel stated that Mr Bonaparte has commenced construction on the lands. This is not to be tolerated. I would say that if these allegations are true, then Mr Bonaparte is continuing to ignore the standing order of Hamel-Smith J (as he then was). This shall not be countenanced by this court. If there are structures, they are to be removed forthwith. If there are structures, Mr Bonaparte will pay the extra costs of that application to be assessed if not agreed.

ORDER:

IT IS HEREBY ORDERED AS FOLLOWS:

ON THE COUNTERCLAIM FILED APRIL 4th 2008:

1. That the Defendants' Counterclaim be and is hereby dismissed.
2. That judgment be and is hereby entered for the Claimant against the Defendants on the counterclaim.
3. Costs to be paid by the Defendants to the Claimant on the counterclaim prescribed in the amount of \$18,454.00.

ON THE CLAIM FILED ON JANUARY 4th 2006:

4. That that part of the Order read in court on 28th March 2012 be recalled.
5. That the Defendants' defence be and is hereby struck out on the ground of disclosing no defence.
6. That judgment be and is hereby entered for the Claimant against the Defendants on the claims.
7. That the Assessment of Damages be referred to a Master in Chambers.

8. That the Defendants do pay the Claimant's Costs of the Claim and Assessment to be determined by the Master if not agreed.

Dated this 28th day of March, 2012.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE