

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1734 of 2004

CV2008-00920

BETWEEN

KENNETH LASHLEY

CLAIMANT

AND

PATRICIA MARCHONG  
HUBERT JOSEPH  
JULIANA WINTER HONORE

DEFENDANTS

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JUDGMENT

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Before the Honourable Mr. Justice A. des Vignes

Appearances:

Ms. Lawson for the Claimant

Mr. Manwah for the First Defendant

Ms. Prowell instructed by Ms. Flemming for the Third Defendant

1. These proceedings concern a parcel of land located at Lopinot Road in Arouca (“the disputed property”). Although there was some difference on the Pleadings as to the correct address of the same, it was not in dispute at the trial that it is properly described as Lot No. 143 Lopinot Road, Arouca.
  
2. The Claimant, by this action, is seeking to establish that as against the First and Third Defendants<sup>1</sup> he is entitled to possession of the disputed property. He contends that he is so entitled by virtue of his being the lawful heir of Cleveland Lashley, deceased or by virtue of him having acquired a possessory title to the disputed property or because he has an equitable interest therein. He is seeking:
  - i. injunctive reliefs against the Defendants;
  - ii. a declaration that he is the fee simple owner of the disputed property;
  - iii. damages for unlawful eviction therefrom;
  - iv. damages for trespass to the said property; and
  - v. damages for trespass to goods.

### **Background**

3. It is not in dispute that the First Named Defendant, Patricia Marchong, who has been residing abroad since around 1994, was at all material times the paper title owner of the disputed property. It is also not in dispute that the said property was previously owned by Horace Marchong and Albert Marchong, as joint tenants, and that after Horace and Albert Marchong passed away in 1973 and 1976 respectively, the said property was vested in the First Defendant by Deed registered as No. 18719 of 1980.
  
4. By a written agreement dated 24<sup>th</sup> May, 2004 the First Defendant, through her duly authorised agent one Anil Riley, agreed to sell the disputed property to the Third Named Defendant, Juliana Winter Honore for the sum of \$45,000. Pursuant to this agreement the Third Defendant paid a deposit of \$4,500 and further payments totalling \$7,500.

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<sup>1</sup> Although three Defendants were named in the Claim, by Notice filed on the 10<sup>th</sup> October 2008, the Claimant discontinued the action against the Second Defendant.

Mr. Hubert Joseph, the First Defendant's Attorney at Law, had conduct of the sale transaction.

5. On or about 24<sup>th</sup> June, 2004, with Mr. Joseph's permission, the Third Defendant entered the said property and proceeded to clear the land and to demolish a structure that stood on the property, in preparation for the construction of a building thereon. On the same day the Claimant filed an action against the Defendants seeking, *inter alia*, injunctive reliefs and damages for trespass, malicious damage and unlawful eviction. On 25<sup>th</sup> June, 2004 Madame Justice Tiwary-Reddy granted an *ex parte* injunction restraining the Defendants from entering, re-entering or remaining upon the disputed property. By order of the said Judge made on 21<sup>st</sup> September, 2004 the injunction was to continue in effect as against the Third Defendant, her servants and agents until the hearing and determination of this action or until further order.

### **The Claim**

6. The Claimant pleaded that he is the lawful issue and heir of Cleveland Lashley and that in or about 1961 he along with his father and his mother, Carmen Lashley began living in a three (3) bedroom concrete dwelling house that was constructed by his father on the disputed property. His father passed away intestate on 30<sup>th</sup> April, 1976 and he and his mother became the sole beneficiaries of his late father's estate and the persons entitled to apply for Letters of Administration.
7. Further, he pleaded that for more than 16 years he has continuously occupied the disputed property and has been in sole and exclusive possession thereof without let or hindrance and without the consent or authority, express or implied, of any other person. He also pleaded that he had been paying taxes in respect of the disputed property since 1961 and that over the years he had repaired, renovated, expanded and added an annex to the dwelling house and that he also built a fence surrounding the said dwelling house.
8. The Claimant further pleaded that in June 2004, relying on an Agreement for Sale dated 24<sup>th</sup> May, 2004 between the Third Defendant and the First Defendant, the Third Defendant, sought to lay claim to the disputed property and attempted to deprive him of

occupation of the said property. He said that the Third Defendant entered the disputed property without his permission and/or consent and proceeded to demolish the three (3) bedroom concrete dwelling house standing thereon causing damage to items that were in the house.

### **The Defences**

9. The Defendants denied that the Plaintiff had continuously occupied and was in sole and exclusive possession of the disputed property as alleged. According to the First Defendant, in or about 1983 she allowed the Claimant, who at the time was working for her, to reside at the premises rent free as long as he remained in her employ. However, after the Claimant ceased working for her he vacated the premises in or about the year 1992 and that since then the property was abandoned, unoccupied and overgrown with bushes and remained vacant up to June 2004. Further, that as a result of the premises being unoccupied, the electricity and water supplies were disconnected. The Third Defendant claims that the Claimant had been living in Tunapuna since 1985.
  
10. The Defendants contend that the Third Defendant did not enter the disputed property unlawfully. They claim that having entered into the written agreement for sale dated 24<sup>th</sup> May, 2004 the Third Defendant was entitled to lay claim to the disputed property; moreover, the First Defendant's Attorney gave the Third Defendant permission to go onto the land. According to the Third Defendant, when she entered the disputed property on 24<sup>th</sup> June, 2004 the structure that was demolished was a dilapidated building which had reached the end of its physical and economic life and not a three bedroom concrete house as the Claimant alleged.

### **Replies to Defences**

11. The Claimant denied that he occupied the disputed property as a licensee of the First Defendant and asserted that since his mother's death on 9<sup>th</sup> October, 1987 he and the rest of his family have been in sole and exclusive possession thereof without let or hindrance of any person. He said the property was never abandoned or overgrown with bushes. He contended that the electricity supply to the premises was disconnected because the bill was unpaid and while he admits that there was never water on the premises, he claimed that a standpipe was used.

12. He asserted that his parents, who both resided at the disputed property until they died, gave him the property by word of mouth before they passed away.

### **Issues**

13. The following issues arise for determination:
  - (i) Whether the Claimant is entitled to possession of the Arouca property by virtue of:
    - i. his being the lawful heir of Cleveland Lashley, deceased; or
    - ii. by virtue of a verbal gift from his parents before they died; or
    - iii. by virtue of his own possession for more than sixteen (16) years; or
    - iv. by virtue of an equitable interest therein.
  - (ii) Whether the Claimant is entitled to an award of damages for trespass?

### **The Evidence**

14. Five witnesses gave evidence on behalf of the Claimant. They were:
  - i. The Claimant;
  - ii. Dennis Winter, the Claimant's step-brother;
  - iii. Irving Winter, the Claimant's nephew;
  - iv. Ann Lashley, the Claimant's wife; and
  - v. Henry Russell, the Claimant's Valuator.
15. As earlier indicated, the Claimant discontinued the action against the Second Defendant in October 2008 and the First Defendant did not attend the trial. Therefore, there was no evidence given of the Claimant being given permission by the First Defendant to occupy the property while in her employ and the Third Defendant was the only witness who gave evidence in opposition to the claim.

## **Discussion of the Issues and Evidence**

### **Is the Claimant entitled to possession by virtue of being the lawful heir of Cleveland Lashley, deceased?**

16. The Claimant, (Kenneth) gave evidence that he is the son of the late Cleveland Lashley (Cleveland) and the now deceased Carmen Lashley (Carmen) and that he was born in 1951. According to him, his parents moved into occupation of a three bedroom house with him in about 1961 and he lived there with them until April 1976 when his father died, intestate. Thereafter, his step-brother, Dennis Winter, (Dennis) moved into the house in 1976 with his wife and six children. In 1980, Kenneth got married and in 1983, his wife, Ann moved into the house as well. In 1984, Dennis, and his family moved out, save and except for his son, Irving Winter, (Irving) who remained at the house. From 1984 to October 1987, Carmen, Kenneth, Ann and Irving lived in the house. On 9<sup>th</sup> October, 1987 Carmen died leaving Kenneth and his family and Irving in occupation thereof.
17. Based on this evidence, Kenneth's claim, in the first instance, is that as the son and lawful heir of Cleveland he was lawfully in possession of the disputed property up to 2004 and he is entitled to a declaration to that effect.
18. The first point to note about this aspect of Kenneth's claim is that after Cleveland died intestate in 1976, Carmen and Kenneth would have been his next of kin and beneficiaries of his estate under the Administration of Estates Act and neither Kenneth nor Carmen applied for or have been granted Letters of Administration of his estate. It is also not in dispute that this claim has not been brought by him as the Legal Personal Representative of Cleveland's and Carmen's estate.
19. Secondly, insofar as Kenneth sought to rely on Cleveland's occupation of the property to support his case of exclusive occupation for more than 16 years, the evidence of Dennis Winter was to the effect that Cleveland had been given permission by the Orange Grove Sugar Estate to occupy the parcel of land as a residential property and that in about 1959, Cleveland and Carmen borrowed money from Albert Marchong to build a house on the property. This evidence demonstrates that Cleveland's occupation was based on permission granted to him by the then owner of the property and therefore, could not

support an argument that he was in adverse possession. “For there to be adverse possession there must be the absence of consent of the paper title owner or where relevant his predecessor in title”: **Grace Latmore Smith v David Benjamin; Grace Latmore Smith v David Benjamin and Kenneth Baptiste**<sup>2</sup>. Unless and until a licence is revoked, occupation of the land is to be ascribed to the licence and not to an adverse claim: **Clarke v Swaby**<sup>3</sup>.

20. In the circumstances, since Kenneth has not been appointed the Legal Personal Representative of Cleveland’s or Carmen’s estate and has not brought this action in a representative capacity, I agree with the submission made by Counsel for the Third Defendant that he lacks locus standi to maintain this claim based on his status as Cleveland’s heir<sup>4</sup>.

**Is the Claimant entitled to possession of the disputed property based on a verbal gift of the property from his deceased father and mother?**

21. It is trite law that no action may be brought upon any disposition of an interest in land unless some note or memorandum of such disposition is in writing and signed by the party to be charged.<sup>5</sup> Therefore, Kenneth could not advance a claim to ownership of the property based on “word of mouth gifts” from his parents. In any event, in his witness statement, Kenneth failed to give any evidence in support of any such gift from his father or mother.
22. Accordingly, his claim to an entitlement to the Arouca property based on this ground must fail.

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<sup>2</sup> Civ. Appeal Nos. 67 and 68 of 2007 per Mendonca J.A. @ Para. 48. See also J A Pye (Oxford) Ltd. v Graham (HL) [2003] 1 AC 419.

<sup>3</sup> [2007] UKPC 1 per Lord Walker

<sup>4</sup> See the decisions of Pemberton J. in Lennard Nelson v Patricia De Freitas CV 2007-00042; Mervyn Rawle Jacob v Ramchan Moonesar HCA 971 of 2005

<sup>5</sup> Conveyancing and Law of Property Act, s. 4

**Is the Claimant entitled to possession of the disputed property based on possession thereof in his own right for more than 16 years?**

23. In his witness statement, Kenneth clearly stated that before their respective deaths in 1976 and 1987 he treated his father and then his mother as the owners of the disputed property. It was only after the death of his mother, Carmen, on 9<sup>th</sup> October, 1987 that he treated the property as his own. According to him, his father paid the land and building taxes for the property and when he died, he paid. This evidence clearly demonstrates that between 1961 and 1987 Kenneth remained in occupation of the subject property with the permission of his father and mother and that he could only claim to be in exclusive physical control and possession in his own right thereafter.

*Law – Adverse Possession*

24. The right to make an entry or to bring an action to recover any land is statute barred after 16 years from the date the right of action accrued<sup>6</sup>. Where a person has been dispossessed or has discontinued possession such a right is deemed to have first accrued either when the owner is dispossessed by the person claiming title to land by adverse possession or when the owner discontinues his possession and the claimant or his predecessor takes possession. This is not a case of discontinuance of possession but a case of dispossession of the paper title owner.

25. The Claimant must establish: (i) factual possession (without the consent of the paper title owner), a single and exclusive possession and such acts as demonstrate that in the circumstances, he had dealt with the land as an occupying owner might be expected to do and that no other person had done so; and (ii) the intention to possess and on one's own behalf and in one's own name to exclude the world at large including the paper title owner: **J A PYE (Oxford) Ltd. v Graham** (HL) [2003] 1 AC 419<sup>7</sup>.

26. Therefore, in order to succeed in his claim to possessory title of the disputed property the Claimant must prove that he enjoyed factual possession of the property for more

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<sup>6</sup> Real Property Limitation Act Chap. 56:03 sections 3 and 4

<sup>7</sup> Approved by the Court of Appeal in Grace Latmore Smith v David Benjamin; Grace Latmore Smith v David Benjamin and Kenneth Baptiste Civ. Appeal Nos. 67 and 68 of 2007



than 16 years after 9<sup>th</sup> October, 1987 and that he had the necessary intention to possess same in his own name and on his own behalf.

27. According to Kenneth, after the death of his mother, he remained in possession of the disputed property with his family and Irving. In 1996, his wife's father fell ill and his wife, Ann began to go backward and forward between Tunapuna and Arouca to take care of her father. In the meantime, due to a leak in the roof and the need for repairs and renovations to the house, his wife spent more time in Tunapuna and he and Irving continued to occupy the property until it was demolished in 2004.
28. The challenge which Kenneth faced at the trial was that his evidence and that of his witnesses were not always consistent with his claim to possessory title. In fact, on several occasions, he gave evidence that did not support his claim and his witnesses flatly contradicted him and each other, making it extremely difficult for this Court to reconcile in a coherent manner the different versions of events given by the witnesses.
29. By way of illustration from Kenneth's testimony under cross-examination, he stated that *"the only claim I am making in this matter is that I got it because of I am the son of my father. It would be correct to say that I am claiming ownership of land as son of my father.... that is my only claim to the land"*. This evidence is in conflict with his contention that after the death of his father and mother, he treated the property as his own and that he is entitled to possessory title by virtue of his own occupation for more than 16 years after the death of his mother. Further, he was insistent that Irving lived in the house until it was demolished and then he went to live in the annexe. This evidence was however contradicted by his wife, Ann who had a different version to tell concerning Irving's occupation of the house and annexe, which I will highlight later on in this judgment. Still further, on the issue of the payment of land and building taxes, which he alleged he had been paying since 1961 and after his father's death, Kenneth admitted that it was only in 2002 that he went in and paid up the arrears of taxes but he could not remember if this went back to 1988.
30. The most blatant contradictions occurred, however, between Kenneth's evidence and the evidence of his step-brother, Dennis and his nephew, Irving. According to Dennis's

Witness Statement, Kenneth took care of his mother until her death in 1987 and thereafter he remained in exclusive occupation and possession of the disputed property for over 16 years without the consent of the Defendants. However, in answer to questions asked by the Court, he stated that: *“the only person living there between 1984 and 2004 was my son, Irving..... I know Kenneth Lashley’s wife. I recall that she went to live in Tunapuna to take care of her ailing father..... I believe that when Kenneth Lashley’s wife went to Tunapuna, the children went with her. I saw Kenneth Lashley there. He used to be backward and forward. Sometimes he was in Arouca and sometimes he would go to Tunapuna where his wife was taking care of her father.”*

31. In Irving’s witness statement, he stated that in 1995 Kenneth’s wife, Ann moved to Tunapuna to take care of her ailing father and thereafter she spent more time in Tunapuna than in Arouca, leaving Kenneth and himself in the property. Under cross-examination, however, Irving stated that *“between 1984 and 2004 the claimant and his family did not live there with me. His wife did not live there with me. Children did not live there with me. His wife and children did not live there between 1984 and 2004. Between 1984 and 2004, the claimant lived there with me. I recall that the claimant’s wife and children stopped living there with me before 1984. I agree with my father when he said that between 1984 and 2004 I alone lived at house because at that time my uncle had married and his wife and his children moved down to Tunapuna and he would go up and down to Tunapuna and Arouca. I only occupied the house. My uncle did not occupy the house between 1984 and 2004”*. Further, in answer to questions posed by the Court, he stated that: *“Uncle Kenneth used to be to and fro. He would come up and spend 2 weeks with me and on weekend he would go to Tunapuna. The reason was that he did not want to leave the house unoccupied whilst being down in Tunapuna with his wife and children. I was living there. I was not the owner. Uncle Kenneth was living with his wife in Tunapuna”*.

32. In respect of the reason for the disconnection of the electricity, he also did not accept responsibility for non-payment of the bills and sought to place the blame for the disconnection on Kenneth when he stated that: *“I did not know that Uncle Kenneth said that I did not pay half of the bill and the electricity got cut off. That is contrary to the truth. Prior to my going to property there was no electricity. I went there by myself in 1984.*

*When Uncle Kenneth was there with his family there was electricity. Due to him moving to Tunapuna, the electricity was cut. He did not continue to pay the electricity. He did not move at same time with his wife. He moved sometime later.”*

33. Kenneth's wife, Ann did not improve the situation when she gave evidence. In her witness statement she stated that after her father took ill in 1996 she went to Tunapuna to take care of him and she travelled backward and forward between Tunapuna and Arouca, *“to take care of my father and the family home to be with my family”*. However, this caused a strain on her relationship with Kenneth. Due to the need for repairs to the leaking roof and the bedroom after a fire in 1996, she and Kenneth agreed to renovate the building and to purchase building materials to carry that work. She and her children then spent more time in Tunapuna, leaving Kenneth in the family home. From time to time, he would overnight in Tunapuna but most of the time he would sleep in Arouca and he washed and prepared light meals for himself there. She and the children slept most of the time in Tunapuna but they also slept in Arouca when her sister visited Tunapuna and was there to take care of her father. She went further to state that Irving stayed in the annexe which was burnt in 2005 but Dennis is still in occupation of the building.
34. Under cross-examination, however, she contradicted herself when she stated that *“it would be true to say that I lived at that house between 1983 and 2004. My children lived at that house as well. It is my testimony that I did not live anywhere else during that time. I lived solely at family house in Lopinot Rd..... It is not true I moved out to go to live in Tunapuna”*. She also contradicted the evidence of Kenneth, Dennis and Irving when she stated that *“after 1987, Kenneth Lashley, me and children alone continued to live in the family house. If Dennis Winter said that between 1984 and 2004 Irving Winter lived at the family house alone, that is not true. His evidence is not the truth.....I am aware Irving Winter gave evidence yesterday. I did not speak to him overnight. I don't know what he said. If he said that he lived in house alone between 1984 and 2004 that is not true. It is my testimony that after 1987 he did not live in the family house. He lived in the annex. It was also untruthful of him to say he lived in the family house.”* Further, she contradicted her own testimony as to the continued occupation of the building by Dennis when she stated: *“when I said that Dennis Winter was in occupation of the building, there was no other building there apart from the family home and annexe. Dennis Winter*

*was not there. He had moved out since 1983 to 1984. The statement that Dennis Winter is still in occupation of the bldg is not true”.*

35. The Third Defendant gave evidence that in May 2004 she entered into an agreement to purchase the Arouca property with the First Defendant’s agent, Mr. Riley for \$45,000. On the same day, she was given permission by the First Defendant’s Attorney-at-Law to go onto the land and clear it in preparation for constructing a dwelling house thereon. Acting on such permission, she went onto the said parcel of land on the 24<sup>th</sup> June 2004 and cleared it of a growth of bush and a dilapidated structure.
36. Her evidence was corroborated by the evidence contained in the Land Mortgage Valuation Report of Ray Pierre dated 19<sup>th</sup> May, 2004 which was admitted into evidence through Kenneth. In that Report, the property was described as comprising “*a residential building lot*” and reference was made to “*the very dilapidated dwelling house standing on this parcel of land (which) does not form part of this report.*”
37. So what do I make of this evidence, given all the contradictions hereinbefore referred to? Bearing in mind that in matters such as this, the burden of proof lies upon the party alleging that the title of the owner has been extinguished by his possession, I am not satisfied that the Claimant has discharged that burden of proof. There were too many conflicts in the evidence given on behalf of the Claimant to persuade me on a balance of probabilities that Kenneth remained in undisturbed and exclusive possession of the property between October 1987 and 2004. Although I believe there was some confusion in dates in the evidence of Dennis and Irving with respect to Kenneth and his wife moving out of the house in 1984 and leaving Irving there alone, I believe that when Ann moved to Tunapuna to take care of her father on or about 1996, she and Kenneth began to live in Tunapuna with their children. Kenneth may have visited the Arouca property from time to time thereafter but given the disconnection of electricity, the lack of water at the house and the clear evidence as to the dilapidated condition of the house, I consider it more credible that Kenneth began to reside in Tunapuna where there were all the comforts and amenities available to him, his wife and his children. I certainly do not believe Ann’s evidence that she continued to live in the house in Arouca with her children and I formed the view that she was inclined to overstate the extent to which she

spent time there in order to bolster her husband's claim without realising that by so doing she was contradicting what he had said, what Dennis and Irving had said and even what she had stated in her own witness statement.

38. In my opinion, therefore, Kenneth has failed to prove to my satisfaction on a balance of probabilities that he remained in exclusive and undisturbed possession of the Arouca property for a continuous period of more than 16 years from 9<sup>th</sup> October, 1987 and therefore, his claim that the title of the First Defendant was extinguished, fails.

**Did the Claimant acquire an equitable interest in the disputed property?**

39. In my judgment the Claimant has not. He admitted that it was his father who built the house that stood on the land. Although he pleaded that, throughout the years, he made repairs and carried out renovation work on the house he provided no documentary or other evidence to substantiate his claim. He submitted receipts showing that in May 2002, he paid land and building taxes in respect of the disputed property but, in my opinion, payment of land taxes, without more, is not sufficient to establish a claim to an equitable interest in property.

**Issue of Trespass**

40. Having found that the Claimant was not in lawful possession of the disputed property and he having failed to show a better title to the said land his claim for damages for trespass also fails.

**Conclusion**

41. Accordingly, the First Defendant was empowered to sell her interest in the Arouca property to the Third Defendant and the Third Defendant is entitled to complete the agreement for sale that she entered into in May 2004 and to enter into possession of same.
42. Since the Claimant was granted an injunction to prevent the Defendants from entering upon the disputed property pending the hearing and determination of this action, the said injunction is hereby discharged with immediate effect. In accordance with the undertaking as to damages given by the Claimant when the injunction was granted, I will

direct that there should be an inquiry into what damages the First and Third Defendants may have suffered by reason of the grant of the injunction preventing the completion of the sale agreement.

43. In addition, the Claimant having failed in his claim must pay the costs of this action to the First and Third Defendants to be assessed in accordance with the **Civil Proceedings Rules 1998**. I will now invite the Attorneys to address me on the issue of costs.

**Dated this 15<sup>th</sup> day of October, 2012**

**André des Vignes**  
**Judge**