

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2007-00266

BETWEEN

The Roman Catholic Archbishop of Port of Spain

Claimant

AND

Lorna Joseph

(By the Legal Personal Representative of her Estate, Martha Joseph)

1st Defendant

Martha Joseph

2nd Defendant

Dean Joseph

3rd Defendant

The Chaguaramas Development Authority

(Joined pursuant to Order dated the 28th day of September 2009)

4th Defendant

Before The Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Appearances

Mr. Christopher Sieuchand and Ms Shivangelie Ramoutar, Attorneys at Law for the Claimant

Ms. Danielle Marcano, Attorney at law for the 1st, 2nd and 3rd Defendants

Mr. Gregory Armorer, Attorney at Law for the 4th Defendant

Delivered on September 26, 2018

JUDGEMENT

A. Introduction

1. The Parties to this matter seek the Court's determination as to the rights of possession over a one-acre property on Monos Island known as Copperhole. The said property, along with all 15 acres of Property on Monos Island is State land vested in the Fourth Defendant since 1972.
2. The Claimant's claim to possession is based on rights of occupation said to have been granted informally to it since the 1940s as well as actual occupation. They also have an application pending since August 22, 1996 with the Fourth Defendant to formalise their occupation by way of a Lease.
3. The 1st to 3rd Defendants ["the Josephs"] Counterclaim a right to occupy the property based on adverse possession. They say they are entitled to remain on the property because the 1st Defendant's husband ["Khaki"] and his father ["Bellamy"] were living in a wooden building and two back rooms of the property ["the annex"] before a priest and sea scouts (i.e. the persons who they say later came to occupy the front part of Copperhole as agents and representatives of the Claimant).
4. The Fourth Defendant makes no Claim against either party. It was joined by the Court on the Application of the Claimant in mid-2009. The Claim was then amended on October 12, 2009 to add relief sought by the Claimant from the Fourth Defendant i.e. finalisation of the Lease. The Claimant now admits that this is not a cause of action. As such the Fourth Defendant's role herein from 2009 had been more as an essential party to shed light on the occupation of the Property and to assist in settlement negotiations. However, after several years, settlement negotiations broke down.
5. On February 21, 2014, the Josephs tacked on an amendment to their Defence and Counterclaim, a new Counterclaim against the Fourth Defendant. Hitherto the Josephs pleadings addressed only the Claimant. In this amendment they included a claim, which they referred to as a "Counterclaim", against the Fourth Defendant as well. They allege that the Fourth Defendant's title to the Property has been extinguished and seek a declaration that they are entitled to possession of it based on adverse possession.

6. The Fourth Defendant did not specifically file a Defence to that new Counterclaim. However, it is clear from the Defence it had filed in 2009 to the Claimant's Claim that its position is that it has exercised all rights of ownership of the Property since 1972 when it was vested. This effectively addresses the Josephs' Counterclaim as well.
7. Additionally, the Fourth Defendant has raised as a point of law that there is no proper Ancillary Claim against it by the Josephs because they did not seek permission to commence such a Claim. The Josephs had filed their respective Defences to the Claimant's case since June and July 2007 respectively. The first Case Management Conference [CMC] herein was held on September 21, 2007.
8. No permission was sought seven years thereafter to make the type of amendment which in 2014 effectively purported to introduce an Ancillary Claim against the Fourth Defendant. All that the Josephs had been granted at that time was permission to file Amended Defences, as explained in Reasons prepared on February 5, 2014 by the then presiding Judge. In November 2017 an Order was made setting a date by which the Josephs could still file an Application to seek permission for the making of an Ancillary claim against the Fourth Defendant. No such Application was ever filed.
9. Accordingly, the Fourth Defendant contends it has no Claim against the Josephs and there is no valid "Counterclaim" or Ancillary Claim by them against it. Generously therefore, they concede that there ought to be no order as to costs against the Josephs for not proving a "Counterclaim" against the Fourth Defendant.
10. There has been a lengthy procedural history in this matter whereby efforts were made by then presiding Judge, Madam Justice Pemberton as she then was to have the matter settled. These efforts included a site visit to the Property in 2014. This was repeated On January 27, 2017 by boat trip shared by the Court staff, all parties and their Attorneys.
11. The proceedings at the Site Visit were fully recorded by a Court Transcriptionist who also attended. An important aspect of the Site visit was that parties and the Court examined the footprint of Copperhole by reference to a Plan submitted by the Claimant. That plan was amended on Site to reflect the Josephs' views on the extent of the back

rooms/ annex area that they occupied. Directions were given for the filing of that Plan by February 10, 2017 and there was compliance by the Claimant.

12. The Josephs graciously shared with the Court and the parties revealing where they spent many childhood and adult years and how all had been lost in a fire. The representatives of the RC Church and Presentation College also shared, with a sense of nostalgia, some of the history of the spot where they engaged in scouting activities and improvement works. The persons present, including Mr. Michael Bachan, former Presentation College Sea Scout, who spearheaded the renovations in the late 1980s, interacted with each other with cordiality and mutual respect as some had been acquaintances over the years.
13. There is no building now where the Copperhole structure stood. There remains only a concrete footprint. What was very clear was that although the footprint of the property is on a small island off the coast at Carenage there is ample space on Monos Island for the Claimant and the first three Defendants to co-exist.
14. Hence, it was hoped that a compromise could have been arrived at with the intervention of the Fourth Defendant whereby parties would have spots, not limited to the Copperhole footprint, allotted for occupation subject to all formal leasing requirements being met. There was no settlement and the matter proceeded to Trial. Evidence was heard on 10 May, 2018. Thereafter the parties were given extended periods of time for filing written submissions which were completed on 3 August, 2018. Thereafter, under the heading of a Notice the Josephs filed further submissions on 30 August, 2018 to which the Fourth Defendant responded in writing.

B. Issues

15. The sole substantive issue to be determined is which of these parties is entitled to immediate possession of the property called Copperhole. The sub-issues to be considered are mainly issues of fact as to:
 - i. How the Claimant came to occupy the Property and the extent to which it has occupied and exercised rights of possession to it since then.
 - ii. What rights to possession accrue to the Claimant from the

manner in which it came to occupy the Property as well as the pending lease application to the fourth Defendant.

- iii. How the First Defendant's husband Khaki came to occupy the Property and the extent to which the Josephs have occupied and exercised rights of possession to it since then.
- iv. What rights to possession accrue to the said first three Defendants as against the Claimant based on the law governing adverse possession.

16. In addition to these substantive issues the Josephs contend that there is an issue of their alleged adverse possession to be resolved between them and the Fourth Defendant based on their Counterclaim. However, the Fourth Defendant having asserted that it had no Claim against those Defendants or even against the Claimant, the issue has been raised as to whether the Counterclaim against the Fourth Defendant, which they say should properly have been an Ancillary Claim but was procedurally defective, is null and void.

17. As aforementioned, even if the 2014 Counterclaim is valid and meets the requirements of the **Civil Proceedings Rules 1998, as amended ["CPR"]**, I have taken into account that the Defence filed in 2009 by the Fourth Defendant did assert full rights over the Property. As such, on the pleadings looked at as a whole, the issue of what rights to possession if any accrue to the Josephs as against the Fourth Defendant based on adverse possession can also be considered.

C. Background Facts

18. When the matter commenced there was a building on the property, where Lorna Joseph [the 1st Defendant"] who died after the Claim commenced, lived for decades with her husband Patrick Joseph, also known as "Khaki" as well as their children. The 2nd and 3rd Defendants are two of those children who grew up at Copperhole along with other siblings.

19. The Joseph family did not solely occupy Copperhole. Copperhole was also occupied for decades by the Roman Catholic ["RC"] Church. It was used mainly for camping activities in a concrete structure, built onto the "back rooms" or "annex" where the Josephs lived. The RC Church made it their Scout House. It was used firstly by Father Casimir Graham and his Belmont Sea Scouts up to the 1960s. It then fell into disuse and disrepair and in the late 1980s it was renovated and used by the RC Churches Presentation College Sea Scouts.
20. The 1st Defendant's husband "Khaki" stopped Presentation College from using Copperhole in 2004. This gave rise to the dispute between the Claimant and the Josephs as to which parties were entitled to possession of Copperhole. The 1st Defendant's husband "Khaki" issued the first salvo by having an Attorney write to the Presentation College Principal on September 10, 2004 to "*revoke any permission previously granted to you to enter upon the subject premises from time to time*".
21. The response to being put out and to this letter was somewhat subdued at first. An Attorney for Presentation College wrote on September 22, 2004 asking for information and documents as to "Khaki's" interest in the property. A week later another Attorney wrote on behalf of the RC Church, asserting that Khaki in fact had no ownership rights in the property as he was "*merely the Caretaker thereof*". Instead, according to this Attorney, it was the Claimant that owned the building and had been given the right to occupy the lands since the 1940s by the Americans then in possession of it.
22. After years of correspondence between the parties the instant claim was filed in 2007. The building at Copperhole burnt to the ground sometime in 2009. For more than ten years there has been no structure where the parties had all occupied. On the site visits to the Property the Court and the parties observed that there is a new wooden and "galvanize" building in a new location to the side of the Copperhole footprint. That building is utilised only by the 3rd Defendant, Dean Joseph as a boat house he resides in for his trade as a Fisherman.

D. Relevant legal Principles

Adverse Possession

23. The requirements to prove possessory title are outlined in the guidance of the English House of Lords decision in **J A Pye (Oxford) Ltd and anor, v Graham and anor (2002) WLR 221** and have been adopted as settled law in the local jurisdiction. The two factors to be examined are: (a) a sufficient degree of physical custody and control and (b) an intention to exercise such custody and control on one's own behalf and for one's own benefit.

24. Slade J in **Powell v Mc Farlane 3 [1977] 38 P& CR 452 at page 470-471** described the first factor as follows:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so”.

25. The second factor was then examined by Slade J and described as follows:

“3. ‘intention, in one's own name and on one's own 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”.

Competing claims for rights to Possession where neither party owns the Property

26. The Privy Council decision of **Ocean Estates Limited v Norman Pinder [1969] 2 W.L.R. 1359** sets out the law and considerations where there are competing claims for a right to possession. Lord Diplock stated:

“In their Lordships’ view the question of what documentary title a vendor is entitled to insist on forcing upon a purchaser has no relevance to the present action. At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an ‘absolute’ title. Where questions of title to the land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.”

27. In **Winfield & Jolowicz on Tort 17th Edition (2006)** at paragraph 13-2, the learned authors state:

“it is not necessary that the Claimant should have some lawful estate or interest in the land so that there is no doubt, for example, that a squatter occupying the land without any claim or right may have sufficient possession to bring trespass...this is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession it is in him who can prove title, i.e. who can prove that he has the right to possess.”

28. The state of the law (adopted in local decisions such as **Samaroo v. Ramsaroop CV 2007-3190**) therefore is that the Court does not have to be satisfied that as against the

world, the Claimant has a good title but the Court only has to be satisfied that as between the parties to the Claimant's entitlement to possession is better than those competing for it.

CPR Rules on the making of an Ancillary Claim

29. Regarding the "counterclaim" of the 1st, 2nd and 3rd Defendants, the CPR clearly outlines the different procedures involved in making counterclaims and ancillary claims. Part 18.1 defines an ancillary claim to include a counterclaim by a defendant against a claimant. It states:

"a. An "ancillary claim" is any claim other than a claim by a claimant against a defendant or a claim by a defendant to be entitled to a set off and includes—

i. A counterclaim by a defendant against the claimant or against the claimant and some other person;

ii. A claim by the defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy;"

30. Thereafter, the Rules proceed to make provisions for ancillary claims and therefore, by definition in Part 18.1, to counterclaims as well.

31. Part 18.5 provides:

"(1) A defendant who alleges that he has a claim or is entitled to a remedy against the claimant may file and serve a counterclaim, as well as filing and serving a defence.

...

(3) The defendant may make a counterclaim—

(a) without the court's permission if he files and serves it at the same time as the defence; or

(b) with the court's permission at any other time."

32. It is instructive that in the **Editorial Introduction to Part 20 of the UK CPR (White Book, Volume 1, 2014)**, which deals with counterclaims and other additional claims, it is stated that the best known form of an additional claim is in "the form of a claim made against the claimant by the defendant." This is known as a counterclaim.

33. Further, as an example of other additional claims, which represents ancillary claims in our Rules, the White Book *ibid* states:

“Another example of an additional claim procedure is the procedure that caters for the situation where, in response to the claimant’s claim, the defendant (whilst perhaps admitting liability in whole or in part) in effect points their finger at a third party alleging that they are obliged to indemnify them for any liability to the claimant, or to contribute to the satisfaction of any judgment.”

34. It further outlines regarding the UK position, that *“although these claims have shared features, care must be taken to ensure that the relevant rules are applied depending on the nature of the Pt 20 claim.”*

E. The Case for each Party- Pleadings, Evidence and Submissions

The Claimant’s case

35. The Claimant’s case, as pleaded in its amended claim form and statement of case filed on October 12th 2009, seeks against the Josephs the following declaration:

“That the Claimant is the owner and entitled to possession of All and Singular that piece or parcel of land situate at Copperhole in the island of Monos comprising one acre more or less and bounded on the North and West by Turtle Bay East by the First Boca, South by other lands of Monos Island owned by the Government of Trinidad and Tobago together with the house situated on the said land comprising a concrete structure measuring 70 feet by 38 feet, comprising 6 rooms and a wooden annex comprising 2 large rooms attached thereto measuring 20 feet by 38 feet (hereinafter referred to as “Copperhole and its buildings”).”

36. The Claimant’s claim against the Josephs arises out of the attempt by those defendants, commencing in 2004, to dispossess the Claimant from Copperhole, the property that now comprises a parcel of land to which the Claimant claims a right of immediate

possession. The Claimant has conceded that given the passage of time and changes in circumstances of this case, the Claimant does not maintain its claim for personal injunctive relief against the Defendants in respect of personal threats of violence.

37. In closing written submissions Counsel for the Claimant relies on the decision of the Hon. Mr. Justice Seepersad in CV 2015-02000 **Haig Community United and Ors. v. The Chaguaramas Development Authority** where he said at para. 14:

“The consent of the true or paper title owner may be either expressed or implied and it is accepted that a natural inference of consent can be drawn where a person is in possession pending negotiations for an interest in land. In Smart v. Lambeth Borough Council [2013] EWCA Civ. 1375, Lord Justice Floyd said at paragraph 36:

“Where a person in possession of land is negotiating with the owner for the grant of some interest in that land, it may be a natural inference from the circumstances to say that the owner permits the occupier to be on the land pending the result of the negotiations.”

38. The Claimant’s claim that it is entitled to immediate possession of Copperhole as against the Josephs does not depend upon any claim of adverse possession as against the Fourth Defendant, but rather its occupation of Copperhole with the implied permission of the Fourth Defendant. The Claimant relies on a principle of long standing that a possessor of land, exercising the ordinary rights of ownership therein, has a perfectly good title against all the world but the rightful owner (see Asher and Wife v. Whitlock (1865) 1 L.R. Q.B. 1 at page 6 and Perry v. Clissold 4 CLR 374 at page 377).
39. In these circumstances, according to the Claimant, the narrow issue arising between the Claimants on the one hand and the Josephs on the other hand is which of these parties was entitled to immediate possession of Copperhole during the material period.
40. The Claimant’s version of events as to its occupation of Copperhole, once a whaling station with its copper cauldrons which was at that time, equipped with a building and certain facilities and under the control of the American navy, is that it began in 1959

when those premises were bestowed upon the Claimant by a Naval Captain. The Claimant claims in submissions that it carried on scouting activities on Copperhole since then. They say Father Graham brought Khaki, the 2nd and 3rd Defendants' father, to Copperhole as a caretaker. The Claimant alleges that Khaki was from Diego Martin and he was a Parishioner at Father Graham's Belmont Church when he was invited to live at Copperhole as a caretaker.

41. In 1988 and thereafter, the Claimant's authorized representatives, the First Presentation Sea Scouts, conducted significant repairs to and investments into the building and put same to use. In the Claimant's pleadings it is alleged that this work was undertaken on the understanding that the Claimant "*was the owner and lawfully entitled to possession and control of Copperhole*" over which it exercised dominion and control up to the year 2004. This dominion having been denied by the Fourth Defendant the Claimant in presenting its evidence and submissions has modified its stance in recognizing that it is the Fourth Defendant that exercised such dominion and owns the Property.
42. The Josephs were, according to the Claimant, at all times recognized and treated as the family members of the Claimant's caretaker, Khaki. The Claimant secured the installation of electricity and paid for electricity at Copperhole through its servants and/or agents.
43. When the Scout Troop sought to enter Copperhole for their annual Christmas Camp on December 4, 2004 they were effectively barred from entering the property by Khaki and the Josephs.
44. In support of this version of events the Claimant relies on evidence, materially unchallenged under cross-examination.
45. Witness Michael Bachan, former Presentation College Properties Superintendent, former Presentation College Sea Scout and current Chairman of the Presentation Properties Advisories Committee gave evidence in his Witness Statement dated March 29, 2018. He was able to give a first-hand account as to knowledge of the RC Church's scouting activities at Copperhole when he was a child in the 1970s. He visited there

with Brother Michael Samuel. He also visited with Father Rochard who was College Chaplain between 1975 and 1980.

46. By 1977 he was Assistant to Brother Samuel as Scout Leader. In 1980 he was warranted as Scout Leader. He documented his experiences in the First Presentation Sea Scouts 40th Anniversary Souvenir Magazine for the period 1955 to 1995. A copy of the Magazine is attached and it reports on Presentation College scouting activities at Monos.
47. Mr. Bachan liaised with Brother Samuels and Father Rochard in the 1980s. He participated in discussions and vetting of letters that pertained to the Presentation Scouts gaining permission from the RC Church to use and renovate Copperhole for scouting.
48. He said in 1989 he met Khaki who introduced himself as the caretaker at Copperhole. Around that time, he began spearheading the renovations of Copperhole. He regularized electricity payments which were in the name of the RC Church. He said from time to time he saw children of Khaki at Copperhole but Khaki lived alone during the week. Later in the 1990s his son Dean, the 3rd Defendant moved in with Khaki.
49. Mr. Bachan made arrangements to rent out Copperhole to College families and charged Khaki with assisting those guests. The Rentals were done based on written rules for use of Copperhole developed by Presentation College. Those Rules were on the back of rent receipts. Samples were attached to his Statement.
50. He says he paid Khaki a stipend which varied from \$100 to 250 per month but no receipt proving this were attached. There was documentary proof of other money spent on Copperhole construction attached to his Statement including payment to Clive Joseph. One of Khaki's sons to install a concrete pier in 1997.
51. Witness Shirley Ann Ghany, Visual Arts Teacher at Presentation College gave evidence about her many visits to Copperhole during the 1990s where she held art classes "en pleine aire" and attended retreats. She also painted designs on the inner walls of the building and displayed students' art work there.

52. The most significant aspect of her evidence was an article she wrote after researching the history of Copperhole, long before this litigation was contemplated. She was inspired by a poem written by a fellow teacher about Copperhole. That poem was attached to her Witness Statement. Her article entitled “Copperhole Rhythms” which she says was completed in 2001 is also attached.
53. The article includes pictures of a building on Copperhole and corroborates the Claimant’s account as to the history of the RC Churches occupation of the Property. She also corroborates their story that Khaki was a caretaker, ironically based on an account he gave to her about how he and his father came to Copperhole.
54. The Claimant’s third Witness was Father Garfield Rochard who, based on his age of 74 years, was able to speak to his personal childhood experiences visiting Copperhole at the time when Father Graham first started RC Church activities there. Those early visits by Father Rochard were from 1943 to 1963. He said he saw no one on Copperhole on those visits.
55. In 1966, on a visit there, he saw a man who was introduced to him by Father Graham as “Khaki”, the Caretaker. He had a boat named “Father Graham”. He was employed to take care of Copperhole in the 1960s. At that time of the 1966 visit there was a concrete building at Copperhole with a wooden shack at the back. Father Graham had a locked room at the front of the building. Khaki and his wife were occupying the back area.
56. Father Rochard visited again in the 1970s and saw that Khaki and his wife and some small children were occupying the same wooden shack. Khaki had keys and opened the main building for Father Rochard. Later on Father Rochard was appointed Presentation College Chaplain and was instrumental in getting permission from the Archbishop for the Presentation College Sea Scouts to use Copperhole for camping and to conduct repairs there.

The Fourth Defendant’s case

57. The Fourth Defendant pleads that it has been aware of the Claimant’s occupation of the Property at Copperhole since sometime before 1983 but it was the Fourth Defendant

that exercised all rights of ownership over the property from 1972 to the present time. The Fourth Defendant also pleads that it was aware that from 1983 and sometime before that there was a caretaker on the property who was the caretaker of the Claimant.

58. The Fourth Defendant did not seek to remove the Claimant from occupation because the Claimant had made a formal Application by 1983 to occupy it to which there was no objection by the Fourth Defendant. The Fourth Defendant was in the process of granting a lease to the Claimant but put a halt to same to await the outcome of the instant proceedings. All construction activities by the Claimant during the 1980s were done with the knowledge and approval of the Fourth Defendant as the proposed camping activities fit within the Development Policy for the area.

59. The Fourth Defendant supported its pleadings by way of the unchallenged evidence of its Acting General Manager, Mrs. Deowatee Dilraj-Batoosingh.

Import of the uncross-examined state of the Claimant's and Fourth Defendant's cases.

60. The effect of the Josephs' failure to cross-examine the Claimant's and Fourth Defendant's witnesses materially is, as submitted by Counsel for the Claimant, "*to leave it solely to the Judge's discretion as to whether there is any basis to impeach the credibility of those witnesses.*" **Browne v Dunn (1893) 6 R. 67** at page 70.

61. Although there had been no material cross-examination by the 2nd and 3rd Defendants their Attorney by way of written submissions sought to point out inherent difficulties with the evidence presented by the Claimant so as to shed doubt on the Claimant's case.

62. At page three of the Josephs' submissions, for example, much is made of the fact that the Claimant's Witness Shirley Ann Ghany retold the story she heard from Khaki about his father Bellamy Joseph having arrived at Copperhole before Khaki. It is unclear why so much reliance is placed on this as discrediting the Claimant. While Mrs. Ghany refers to Bellamy being brought to Copperhole before Khaki, the story she tells is of both gentlemen being employed there by Father Graham as caretakers. Accordingly, even if there is an inconsistency regarding whether father or son came first, there is no resulting support for the Defendants case as to Khaki being in charge of the Property.

63. Counsel for the Defendants argues however that because the Claimant pleaded that Khaki was brought by Father Graham from Diego Martin as caretaker they must prove that it was him and not his father that was brought there first. Phipson on Evidence is cited as authority that “he who alleges must prove”. However, the fact that the Josephs must also fully prove their Counterclaim, which relies on a version of events with Bellamy arriving and settling on his own at Copperhole before the RC Church, is not addressed in the Submissions. No assistance on this critical aspect of the Counterclaim is lent by the testimony of Mrs. Ghany.
64. The Josephs’ submission also seeks to rely on the Claimant’s witness Mr. Bachan’s statement that in repairing the building no work was done by the Scouts on the annex where the Defendants lived. They submit that this is evidence that the Claimant was never the owner of the annex.
65. Another point underscored in the submissions for the Josephs is that in all the evidence presented by the Claimant’s witnesses there is inconsistency regarding the amount and manner of payment of the alleged caretaker’s stipend to Khaki. Furthermore, while there is the testimony of witnesses, there is no documentation to prove such payments were ever made or that Khaki was ever retained as a caretaker.
66. Regarding the case for the Fourth Defendant, the Josephs submit that there was no Defence filed by that Party in Response to their Counterclaim against it. Therefore, they say, the Fourth Defendant has admitted the case against it. Thus, they contend that they are entitled to Judgment against the Fourth Defendant on the Counterclaim. The Counterclaim they say they have succeeded on is that they have by alleged lengthy undisturbed possession, extinguished the State’s title to the Property.

The Josephs’ case

67. It is the Josephs’ case as summarised in written closing submissions that the grandfather Bellamy Joseph built a hut on the said parcel of land in the 1950s. They contend that over the years improvements were made to the hut with no permission needed from anyone. The Defendants’ father Khaki and their siblings converted a kitchen into a bedroom and added a wooden extension a kitchen and a gallery. Improvements were also made to the outside bathroom and toilet. They repaired the roof, the sea walls and

constructed the western sea wall and bathroom and engaged in maintenance of the grounds.

68. In the Pleadings filed by the Josephs they deny that Father Graham of the RC Church brought Khaki to Copperhole as a caretaker and permitted him to live in the back rooms with his family. Instead they say that they “and their predecessors in title have been in continuous and undisturbed possession of Copperhole since in or about the year 1951 which was before the RC Church started camping activities on the Island.
69. In support of this version of events the said first three Defendants rely solely on the evidence of the 2nd and 3rd Defendants. They have put forward no documentary evidence but seek to rely on documents filed by the Claimant. In particular they point out that in letters dated August 22, 1996 attached as “D” to the Statement of Claim as well as August 12, 1987, November 7, 1988 and November 22, 1988 attached thereto as “A” the Claimant writes in a manner that acknowledged that it only had informal permission to use Copperhole and there were legal implications to be sorted out regarding its occupation of the Property.
70. No documents whereby Khaki or any of the Josephs wrote in a manner showing they had full dominion over the property, such as utility correspondence, were tendered by them. The only such document was their Attorneys 2004 letter dispossessing the Claimant, and that letter was attached to the Claimant’s Pleadings. Ironically, that letter followed an undated letter to Khaki, the first and only one sent to him over the years by the Claimant or its agents. According to the Claimant’s pleadings, that letter told Khaki he was to be replaced as caretaker at Copperhole by a person chosen by Presentation College. A reading of the letter does not in my view allow for such an interpretation. It does not say Khaki is to be replaced. Instead the letter is written in an unusual way, almost as though as a courtesy Khaki had to be informed about a new person coming to work with the Presentation Scouts on the Property.
71. No other persons such as neighbouring occupants on Monos Island, other siblings or acquaintances familiar with their occupation and history at Copperhole were called as witnesses on behalf of the Josephs. Thus there was no one to corroborate that Khaki lived there before the RC Church occupied it, that he was never there as a caretaker and

that he exercised full undisturbed dominion over Copperhole or any part thereof, including the annex.

72. The 2nd and 3rd Defendants were cross-examined by Counsel for the Claimant and the Fourth Defendant. Ultimately, they were discredited as to a number of important points regarding their claim to entitlement to possession of the Property. Citing guidance in **Horace Reid v Dowling Charles and Percival Bain PC Appeal No. 36 of 1987** on how the evidence must be evaluated, some of the more salient points on which significant doubt was shed as to the Defendant's version of events are set out in the Claimant's written closing submissions as follows:

i. Para 21 of the submission - Inconsistency between the 1st to 3rd Defendants' cases and Contemporaneous Documents contrasted with the consistency of the Claimant's case with said documents –

- At para. 8 of the 2nd and 3rd Defendants' Defence, they deny that the deceased ever lived in Diego Martin, but the 2nd Defendant's birth certificate shows that her place of birth is 1st Street Maraval and Maraval is in Diego Martin (see page 869 of the Bundle of Documents);
- Both the 2nd and 3rd Defendants admit that Father Graham installed electricity at Copperhole at paras 8 and 10 of their witness statements respectively, as was pleaded at para 13 of their Defence. Uncontested evidence of these electricity rates payments can be found in the T&TEC receipt which is attached to the witness statement of Michael Bachan and marked "M.B.6";
- The 2nd Defendant admits at paragraph 4 of her witness statement that the scouts built the concrete structure and at paragraph 10, that the scouts repaired the scout house in 1988, a fact which the 3rd Defendant admits at paragraph 12 of his witness statement. The value of this investment was also supported by a Summary of Investment at Copperhole for works completed as at 1997 which Michael Bachan attached and marked "M.B.12" at paragraph 42 of his witness statement;

ii. *Paras 24 and 25 of the Submission – The unreliability of the 2nd and 3rd Defendants' Evidence*

- Whereas the 2nd and 3rd Defendants claim rights in respect of Copperhole as defined in the Claimant's pleadings, the 2nd and 3rd Defendants' witness statements only contain evidence in relation to exclusive occupation of an annex to the back of what is described as the scout house;
- The 2nd and 3rd Defendants plead that they have been in continuous possession of Copperhole (see para. 20 of the 2nd and 3rd Defendants' defence) but the 2nd Defendant accepts at paragraph 17 of her witness statement that she did not always live at Copperhole. Under cross examination by Attorney-at-Law for the Fourth Defendant, the 2nd Defendant admits that she has not lived at Copperhole for quite some time, in direct contravention of para. 18 of her witness statement;
- Whereas at para. 22 of the 2nd and 3rd Defendants' defence, it is pleaded that the 2nd and 3rd Defendants' grandfather and father, with the assistance of a skipper and the Belmont Sea Scouts, erected a concrete structure of considerable size at Copperhole, the 2nd and 3rd Defendants' witness statements (at para. 4 and 6 respectively) states that the 2nd and 3rd Defendants' grandfather erected a partly wooden and concrete structure, and the scouts built a concrete structure annexed to their house at the front.
- The 2nd and 3rd Defendants' defence at para. 14 denies that the Claimant exercised dominion and control over Copperhole. At para. 12 of her witness statement, however, the 2nd Defendant admits that the scouts did exercise control over the scout house and under cross examination, the 2nd Defendant refers to the concrete structure as the "scout house" and she describes extensive and exclusive use of that scout house by the Claimant's representatives. Under cross-examination, the 2nd Defendant also admits knowing the location of Father Graham's room in the Scout House and not being allowed to go into the scout house.
- The 3rd Defendant claims to have lived at Copperhole all his life (see para. 3 of his witness statement) and continues to live there (see paras. 19 and 20 of his witness

- statement) but admitted under cross-examination by the Fourth Defendant's Attorney-at-Law that his belongings are at Jelico Street, his mailing address is 21 Fourth Street Maraval, his car is usually parked near his last child's mother's home in Morvant and all of his children live on the mainland and not at Copperhole;
- The 2nd and 3rd Defendants' defence at para. 14 thereof denies that the Claimant exercised dominion and control over Copperhole but under cross-examination, the 3rd Defendant admits that Father Graham's room was always locked and there is no evidence that the 2nd and/or 3rd Defendants or any of their relatives exercised any control over the "Scout House" at all;
 - Upon cross examination, the 2nd and 3rd Defendants admit that they did not know Bellamy Joseph (see para. 3 of their respective witness statements) and could not speak to his presence at Copperhole, or the circumstances in which he was let into occupation at Copperhole, if at all, as he died in 1963 when they were children;
 - Both the 2nd and 3rd Defendants at para. 3 of their respective witness statements stated that they have lived at Copperhole all of their lives however; the 2nd Defendant's birth certificate at page 869 of the Bundle shows her place of birth as 1st Street Maraval and not Copperhole and the 2nd Defendant further admits under cross-examination that she moved to St James at age 30 in 1991 and she rented and continued to rent on the mainland. The 3rd Defendant admits that his belongings are stored at Jelico Street and that he uses 21 Fourth Street Maraval as his Mailing Address and he cannot say how or when he came to be at Copperhole;
 - Under cross-examination, the 2nd Defendant admits that para. 19 of her witness statement is incorrect and that the boathouse which was constructed after the fire was not located on the same location which was originally occupied by the 2nd Defendant;
 - Under cross-examination, the 3rd Defendant has admitted that the date on which he came to live at Copperhole provided in para. 3 of his witness statement is inaccurate and he admits to not knowing how he came to live at Copperhole;

- Under cross examination, both the 2nd and 3rd Defendants admitted that they occupied a wooden annex which was one building with the Scout building. The 3rd Defendant did not define the area and/or parcel of land of which he claimed adverse possession in his defence but misleadingly purports to do so at paragraph 19 of his witness statement by describing the property at Copperhole which was destroyed by fire as now a galvanized and wooden structure which was constructed after the fire. Under cross examination, he admits this inconsistency by distinguishing between the wooden annex which was previously occupied as opposed to the boathouse which was built after the fire. Notably, this location of the boathouse is evidenced by pictures attached to the witness statement of Michael Bachan at “M.B.21”;
- At para. 4 of her witness statement, the 2nd Defendant states that her family occupied a partly wooden and partly concrete structure and the Scouts built a concrete structure annexed thereto. This is inconsistent with the pleadings of the 2nd and 3rd Defendants (see para. 22 of their Defence). Under cross-examination by Counsel for the Claimant, however, the 3rd Defendant admits that there was only one building, part of which was occupied by his family and the remainder by the Scouts, those parts being separated by a wall.

iii. Paragraph 26 of the Submissions – The Probability of the Respective Cases

- It is improbable that the 2nd and 3rd Defendants’ father and/or grandfather would have permitted the Church to occupy the larger portion of the structure, while the 2nd and 3rd Defendant’s family occupied a very small annex at the back if as alleged by the Defendants he had dominion over the entire Property;
- It is highly unlikely that the Claimant would have invested considerable sums of money into the repair and upkeep of Copperhole and paid for electricity for Copperhole from which the Defendant’s benefited if that site was owned and/or controlled by the deceased, Khaki and/or his family;

73. I have found that there is merit in all of these points selected from the Claimant's submissions and set out above with modifications. These points are relevant in highlighting weaknesses in the case presented by the Josephs and were persuasive in coming to my conclusions herein.

F. Findings

74. As it relates to the Claim against the Josephs, it is my finding that the Claimant has proven on a balance of probabilities that the RC Church and its agents occupied, had dominion and exercised full rights of possession over the front part of the footprint of Copperhole that was used as the Scout house.

75. This finding is based on the uncontroverted evidence from the Claimant as to occupation from the 1950s to 2004 when they were dispossessed by the Josephs. The Claimant's occupation was by RC Church Priests, their Belmont Parish Sea Scouts and their Presentation College Sea Scouts as well as other teachers and students from that college.

76. The pleading of the First Defendant that the entire building was constructed by Khaki's father Bellamy and the Claimant together in 1959 has not been substantiated by any evidence. The evidence of the 2nd and 3rd Defendants in fact admits that it was the RC Church scouts who built the Scout house. All the 2nd and 3rd Defendant claim to have built in 1971 is a wooden extension annex to the rooms they occupied at the back of the Scout house.

77. The Claimant has failed to meet the standard of proof that, on a balance of probabilities, it ever occupied or exercised any rights of possession over the backrooms, also referred to as the annex, which was joined to the back of the Scout house. The Claimant admits that the Josephs occupied that part and has not proven that they did so based on permission from the Claimant.

78. Much is made by the Claimant of the Josephs' husband/father having served as a Caretaker and that it was on that basis that he was brought to Copperhole. However, no first hand evidence was presented that Khaki or even his father Bellamy was brought there as a caretaker.

79. This aspect of the Claim was also doubtful because documents attached to the Statement of Claim, authored by the Claimant's priests and scout leaders made no mention of Khaki or Bellamy performing that role over the years. Not even the letter to "Khaki" sent sometime in 2004 addresses him as a caretaker. The Claimant's pleadings incorrectly states at paragraph 23 that this letter was in effect a letter dismissing Khaki as caretaker and replacing him with someone else. On my reading of the letter it does no such thing. It merely extends courtesies to Khaki by introducing a new employee of Presentation College who will be working at Copperhole.
80. The article by Presentation College Art Teacher, Cheryl Ghany, which she says was completed in 2001, is the only document that referred to Khaki as a caretaker. It is not clear whether it was published before 2004. However, she therein purports to give an account that differs from the Claimant's case. She says it was Khaki's father who was brought there as a caretaker and thereafter Khaki too functioned as one. This inconsistency does not sufficiently assist with the part of the Claimant's case that contends that Khaki was brought to Copperhole by Father Graham as the caretaker.
81. No accounting is presented in evidence as to payments of stipends to Khaki for working as a Caretaker. This omission is glaring in the context of copious other evidence presented as to carefully kept documentation on other spending such as for Copperhole renovations and rentals. No contract, receipt or even a letter is presented to support that Khaki was a caretaker. All evidence in that regard was uncorroborated hearsay of a kind that I found not to be convincing enough to meet the civil standard of proof.
82. The Josephs, on the other hand, have not succeeded in presenting any cogent or compelling evidence that on a balance of probabilities they were in adverse possession of any part of the property known as Copperhole. Although their evidence as to occupying the annex was undisputed, they failed to present other evidence to corroborate the hearsay accounts they retold of Khaki having arrived at Copperhole and built his home (which became the annex) before anyone from the RC Church arrived.
83. The Josephs also failed to present any evidence as to how and in what capacity Khaki came to Copperhole. The only one of the Josephs who would have been old enough to

speak personally to these issues was the 1st Defendant. She regretfully died before presenting any evidence. The 2nd and 3rd Defendants were children aged around 7 and 6 years respectively when they came to live with Khaki at Copperhole. Their grandfather Bellamy had died when the 3rd Defendant, Dean, was around two years old.

84. It seems to me that the evidence from the Josephs regarding how Bellamy came to Copperhole is based more on family legend, passed on to them by Khaki, than proven fact. Further, due to the lull in use of Copperhole by RC Church Scouts during the period from around 1968 to 1989 when the Presentation College Scouts came, the younger Josephs may have grown up seeing only Khaki in charge of the home where they lived. His history of possibly being either the son of an initial caretaker or a caretaker brought there himself by the RC Church may not have been told to them for many reasons.
85. It may have appeared to the Josephs in 1989 when the Presentation College scouts started coming that it was Khaki who was giving permission and allowing them to use the front rooms. Even the Presentation College Scouts may have been unsure of Khaki's role by then. They treated him as a person to whom they had to at least extend courtesies, as can be seen in the undated letter sent to him in 2004 to introduce another employee. It was around the time that Khaki received that letter that he stopped the Scouts from visiting Copperhole and as such the Claimant was dispossessed.
86. Despite having pleaded the story he was told about Bellamy and Khaki, the 3rd Defendant, Dean, admitted under cross examination that he did not know who told his father he could build at Copperhole or how he himself came to be living there.
87. Although the case presented by the Josephs as to the role Khaki played at Copperhole, whether as the original settler or a caretaker, is obscure, there is clarity in their admissions as to the RC Churches dominion over the front parts of the building. The 2nd Defendant admits that as children they were not allowed to enter the front rooms of the house referred to as the Scout house part of the building. In fact, she says her father had no keys to that part and one of the front rooms belonged to Father Graham.

88. The Claimant's case that Khaki was the caretaker of that part of the building, though not meeting the civil standard of proof, was stronger than that of the Josephs. Accordingly, the Josephs' Counter claim against the Claimant and the Fourth Defendant fails. They will be required to pay part of the costs of the Claimant on the Claim.
89. The Fourth Defendant has underscored that it never brought a Claim seeking any relief against the Claimant or the Josephs. Furthermore, the Fourth Defendant posits that the Josephs' Counterclaim of adverse possession against it was procedurally invalid. They say it was also bereft of details as to the exact location the Josephs claim to have occupied. Accordingly, it has been conceded in written submissions that the Josephs ought not to be ordered to pay the costs of the Fourth Defendant.
90. The outcome therefore, of the Court's resolution of this long outstanding dispute allows for the Claimant to resume scouting activities at Copperhole and have a lease from the Fourth Defendant finalised. On these pleadings that lease can be limited to the front area also referred to as the Scout house part of the Copperhole footprint, which they have established was not in the possession of the Josephs.
91. The Josephs no longer occupy the annex in the spot where the Copperhole building stood on Monos Island, so there is no immediate impact of this decision on them. Any remaining Claim they may wish to pursue further as to the annex part of the footprint of Copperhole and/or the boat house to the side of it now utilised by Dean Joseph, could have been addressed by them with the Fourth Defendant. No such Claim was properly raised herein, whether in terms of procedural correctness or by way of any convincing evidence as to adverse possession.

G. Order

92. The Claim of the Claimant against the Fourth Defendant is dismissed as having not been pursued there being no cause of action expressed therein.
93. The Counterclaim of the First, Second and Third Defendants is dismissed as against the Claimant and the Fourth Defendant with no order as to costs.

94. There is Judgement for the Claimant against the First, Second and Third Defendants on the Claim for the Declaration sought at paragraph 1(one) thereof, amended to reflect that:
- a. The Fourth Defendant and not the Claimant is the owner of the property;
 - b. There are now no buildings on the property and;
 - c. The Claimant is in possession of only the scout house area of the footprint of the Copperhole property as depicted in the Plan filed by the Claimant on February 10, 2017 in accordance with directions given at the January 27, 2017 site visit herein.
95. The Claimant is hereby directed to submit to the Court a Draft Declaration on or before October 1st, 2018 and this Order will take effect once the Draft is settled by the Registrar.
96. Half the costs of the claim in the amount of \$7,000.00 is to be paid by the First, Second and Third Defendants to the Claimant.
97. Liberty to Apply.

Delivered on September 26, 2018

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely, JRC 1