

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2014-03618**

**BETWEEN**

**GARVIN PETERS**

**First Claimant**

**JOAN WILLIAMS-HOLDER**

**Second Claimant**

**AND**

**EDWINA KELLY**

**First Defendant**

**APPLELONIA KELLY**

**(Erroneously sued as Applonia Kelly)**

**Second Defendant**

**HALEY KELLY**

**(Erroneously sued as Halie Kelly)**

**Third Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery:** 13 November 2019

**Appearances:**

The Claimants not attending and unrepresented

Mr. Emerson John-Charles for the Defendants

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**JUDGMENT**

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## **I. Procedural History**

- [1] The Claimants commenced these proceedings by way of Fixed Date Claim Form and Statement of Case filed on 6 October 2014 for a declaration that they are the owners and entitled to possession of the land situate in the Ward of Arima comprising eight hundred and seventy point zero square metres (870.0m<sup>2</sup>) known as Lot #36A Unityville, Olten Road, Arima (hereinafter “the said property”). The Claimants also claimed for damages for trespass, damages for malicious damage to the said property, an injunction restraining the Defendants from entering or remaining upon or continuing in occupation of or in any way trespassing on the said property and a mandatory injunction compelling the Defendants to restore the said property to the state prior to their acts of trespass.
- [2] The Defendants entered their appearances separately on 24 October 2014. The first hearing of the Fixed Date Claim was scheduled for 13 November 2014. On that date neither the Claimants, the Defendants nor their legal representatives were present and thus the first hearing of the Fixed Date Claim was adjourned to the 27 January 2015. On the adjourned date the Claimants were absent without excuse but represented by an attorney-at-law. The Defendants were also absent, unrepresented and their Defences were not yet filed. The first hearing of the Fixed Date Claim was again adjourned on two further occasions owing to the non-appearance of the Defendants, that is, on the 29 January and the 25 March 2015.
- [3] On 25 March 2015, the Court gave directions for the filing of affidavits in support of and in response to the Fixed Date Claim. The Claimants filed an affidavit of Joan William-Holder in support of their Fixed Date Claim on 11 May 2015. The Defendants, however, did not file a response affidavit.
- [4] It was not until 15 September 2015 that each Defendant filed a separate Defence and Counterclaim. In essence, they counterclaimed for a declaration that the Claimants are not the *bonafide* owners and that the Claimants do not have any rights on the said property occupied by the Defendants and their family. The Defendants also counterclaimed for a permanent injunction restraining the Claimants from entering onto the Defendants’

premises as well as damages for trespass and for demolition of fruit-bearing trees, plants and crops.

[5] At the Case Management Conference on 1 October 2015, the Court ordered that the Defences of the First, Second and Third Defendants filed on 15 September 2015 were to stand though filed out of time. Permission was subsequently given to the Claimants to file and serve a Reply to the Defences and a Defence to the Counterclaims on or before 30 October 2015. The Claimants, not having complied with this direction, sought by Notice of Application filed on 6 November 2015 an extension of time to file their Reply and Defence to Counterclaims which was annexed to the said application. The Court granted the application on 12 November 2015 and ordered that the Reply and Defence to Counterclaims filed on 6 November 2015 do stand.

[6] Thereafter, the Defendants filed their Amended Defence and Counterclaim on 15 January 2016, having received permission from the Court on 15 December 2015. The Court gave the Claimants directions for the filing of their Amended Reply to the Amended Defence and Counterclaim. However, the Claimants did not comply.

[7] At the next Case Management Conference held on 26 April 2016, the Court gave directions for the filing of a proposed application by the Claimants to strike out the Amended Defence and Counterclaim together with submissions and authorities on or before 10 June 2016 in relation to all three Defendants. Consequent directions were given for a response to the proposed application together with response submissions and authorities by the 14 July 2016. However, the Claimants did not file any application to strike out and thus no response was necessary from the Defendants.

[8] By Notice of Application filed on 14 July 2016, the Claimants applied to the Court for an interim injunction pursuant to **Part 17(1)(a) of the Civil Proceedings Rules 1998 (CPR)**. On 26 July 2016, the Court heard the said application and granted the injunction effectively restraining the Defendants by themselves, their servants and/or agents or howsoever otherwise from entering and/or remaining upon the said property as well as from building, planting, fencing, placing and/or removing any structure, equipment, furnishings, fittings

and/or crops from the said property, until the determination of this claim or until further order of the Court. Additionally, the Court gave full, standard pre-trial directions and fixed a Pre-trial Review (PTR) for 15 February 2017. The trial was set for 5 and 6 April 2017.

[9] Thereafter, the Claimants filed their List of Documents on 29 September 2016 and their Agreed and Un-agreed Bundle of Documents on 7 November 2016. The Claimants filed three witness statements on 11 November 2016 in support of their Fixed Date Claim, namely that of (i) Darent Jones; (ii) Barbara Rivers-Williams and (iii) Joan Williams-Holder. However, the Defendants did not comply with any of the Court's directions for trial.

[10] On 15 February 2017, the date fixed for the Pre-trial Review, none of the parties or their attorneys-at-law appeared. The Court therefore ordered that the PTR be rescheduled to a date to be fixed after consultation with the attorneys-at-law for both sides. The Court's Judicial Support Officer on 16 March 2017 notified the parties' attorneys-at-law via email that the trial dates fixed for 5 and 6 April 2017 were vacated and that the PTR was now fixed for 5 April 2017.

[11] On 5 April 2017, the Claimants were absent and unrepresented. The Court had regard to the fact that Mr. Emerson John-Charles came on record for the Defendants in November 2016 through the Legal Aid and Advisory Authority and had only received instructions from the First and Third Defendants the weekend before the 5 April 2017. Accordingly, the Court granted the Defendants relief from sanction in relation to the non-compliance with the Court Order dated 26 July 2016. The Court gave further standard pre-trial directions fixing a further PTR for 25 July 2017. The Court also ordered that notice of this order be issued to the Claimants' attorney-at-law.

[12] The Defendants filed their List of Documents on 19 May 2017. On 9 June 2017, they filed four witness statements, namely that of (i) Applelonia Kelly; (ii) Edwina Kelly; (iii) Betty Ann Kelly; and (iv) Haley Kelly. The Defendants also filed their Statement of Issues on 7 July 2017.

[13] On 25 July 2017, the date fixed for a further PTR, there was again no appearance by the Claimants nor their attorney-at-law. On that account, the PTR was adjourned to 7 November 2017 to ascertain whether the Claimants were still interested in prosecuting this claim bearing in mind that the Claimants had not appeared on the last three occasions. The Court directed that notice of the order be served on the Claimants' attorney-at-law by the Court.

On 7 November 2017, the matter came up for a Status Hearing and the Claimants again were absent and unrepresented. However, the Court was informed that the attorney-at-law for the Claimants, Mr Mervyn Mitchell, had recently passed away. The Court therefore gave time for the Claimants to retain fresh legal representation and ordered the following: (i) the trial was fixed for the 7 March 2018; (ii) All deponents of witness statements to be present for cross examination; and (iii) Notice of this order to be served on the Claimants personally by the Registrar of the Supreme Court.

[14] The matter was called for trial on the 7 March 2018 but the Claimants again did not appear and were unrepresented. Evidence was taken from the Defendants and accordingly, directions were given for the filing of submissions by the Defendants only.

## **II. Factual Background**

[15] By their Statement of Case, the Claimants had set out the history of the title of the said property. They pleaded that by Deed registered as No 16352 on 24 November 1964, Elliott Lancelot Netto (hereinafter referred to as Elliott) was seised in unencumbered fee simple and in possession of a piece and parcel of land comprising **THIRTEEN ACRES, THREE ROODS AND TWENTY PERCHES**. This property is referred to as the Larger Parcel.

By an agreement for sale dated 10 September 1983 made between Elliott and Elliott Netto Service Station Limited (hereinafter referred to as "the Service Station"), Elliott agreed to sell the Larger Parcel to the Service Station for the purchase price of \$1million. This purchase price was paid by the Service Station. However, Elliott died on 2 July 1999 and no deed of conveyance was executed to transfer the larger parcel to the Service Station.

[16] It is the Claimants' pleaded case that by an agreement in writing dated 15 November 2006, they contracted with the Service Station to purchase the said property. They pleaded that their mother, Barbara Rivers-Williams, acted as their agent throughout the purchase of the said property which spanned from 15 November 2006 to 8 March 2013.

The Claimants averred that in or around 2010, through their mother, they were granted permission by the Legal Personal Representative of Elliott, Gem Netto, to enter and prepare the said property for their eventual occupation and intended use as a residence for their families. The Claimants claimed that the said property was vacant but inaccessible due to the dense forestation and the waterlogged conditions. The Claimants, therefore, employed labourers to clear the said property to begin construction.

[17] It is the Claimants' case that when they together with labourers attempted to access the said property, the First Defendant (hereinafter referred to as Edwina) together with her servants and/or agents interfered with and/or prevented them. The Claimants pleaded that Edwina and/or her servants and/or her agents continued to disrupt the Claimants' peaceful entry and occupation of the said property and have threatened the Claimants whenever they go to the said property. The Claimants averred that the Defendants wrongfully claim ownership and entitlement to possession of the said property.

It is the Claimant's pleaded case that by Deed of Conveyance dated 8 March 2013 registered as No DE 201301096678, the Claimants became seised and entitled to possession of the said property free from encumbrances.

[18] The Claimants pleaded that in or around August 2014, the Defendants and/or their servants and/or agents wrongfully entered the said property and have wrongfully taken possession of same and have thereby trespassed thereon. Notwithstanding repeated requests to vacate and deliver up the said property, the Defendants have failed and/or refused to do so. Instead, they are illegally constructing a dwelling house on the said property. The Claimants have therefore been deprived of the use and enjoyment thereof and have suffered loss and damage.

[19] The Claimants therefore seek the following reliefs:

- (i) A declaration that the Claimants are the owners and entitled to possession of the said property situate in the Ward of Arima in the Island of Trinidad comprising eight hundred and seventy point zero square metres (870.0m<sup>2</sup>) more or less known as Lot #36A.
- (ii) Damages for trespass to the said property.
- (iii) Damages for malicious damage to the said property by the destruction of shrubbery and trees by the Defendants through their illegal construction on the said property.
- (iv) An injunction restraining the Defendants from entering or remaining upon or continuing in occupation of or in any way trespassing on the said property.
- (v) A mandatory injunction compelling the Defendants to restore the said property to the state prior to their acts of trespass.
- (vi) Costs.
- (vii) Such further and/or other relief as the nature of the case may require.

[20] Edwina, in opposition, pleaded that in 1963, she and her husband were looking for agricultural land to cultivate and that in 1965, Old Man Netto told her that there was available land on the train line in Arima, which belonged to the government. It is Edwina's pleaded case that she and her husband started clearing the location in 1965 and thereafter planted plantains, soursop, breadfruit, chataigne, pommecythere and short crops including yam, dasheen and cassava at Unityville, Darwill Gardens Extension via Olten Road, Arima.

[21] By her Amended Defence Edwina pleaded that she and her husband continued cultivating the said property and sold produce derived therefrom. She further pleaded that she and her husband fenced and occupied lots 36 and 36A. It was averred that Edwina and her husband then constructed a small shack and stored all their tools and garden supplies. In the early 1970's, Edwina and her husband decided to move their family to Unityville and

so they constructed a two storey house built with mud downstairs and wood upstairs. They eventually moved in or about the year 1976.

[22] It is Edwina's pleaded case that the family occupied 4 lots of land at Unityville undisturbed until 1988 when Edwina received a notice to quit from attorney at law Brian Camejo of Fitzwilliam, Stone, Furness-Smith and Morgan. However, Edwina and her family continued occupation of the said property and treated the occupied property as their own. Edwina averred that on 3 November 1991, she leased a portion of the land to Charlene Thomas and that on 5 April 1994 Edwina gave Charlene Thomas notice to quit. Thereafter, Charlene left the premises.

[23] Edwina averred that she was not present in 2010 when the Claimants and the other persons entered the said property. At that material time she was in Tobago and only returned when her granddaughter, the Third Defendant (hereinafter referred to as Haley), called and informed her that unknown persons had entered the said property armed with cutlasses and other items that could cause danger to her family. Edwina pleaded that Haley told her that the persons also had a tractor and drove unto the said property causing damage to the fence and a mango tree. Edwina denied that the said property was vacant and inaccessible since they were in occupation of the said property at the time.

[24] Edwina contended that she returned from Tobago at about 4pm on the date that the Claimants entered the said property and she found that all her plantains, soursop, coconut, chataigne, breadfruit and plum trees were chopped down. She pleaded that Hayley informed her that the produce and crops were taken away by the Claimants and/or their workmen and/or agents. Edwina denied that she was home at the time when the Claimants entered the said property. She averred instead that her daughter, Betty Ann Kelly and Haley were home at the time and could not stop the Claimants and/or their workmen and/or their agents from causing damage.

[25] Edwina pleaded that in 2000, she applied for a Certificate of Comfort and she joined the "National Squatters Association of Trinidad and Tobago" where she was required to pay a fee of \$25.00 per month. She averred that whatever title the paper owners had to the



said property would have been extinguished by 2013 by reason of her occupation of the said property since 1965. She pleaded that she has occupied the said property without interruption since 1965 together with her children and grandchildren including the Second and Third Defendants.

[26] The Second Defendant (hereinafter referred to as Applelonia) stated that she was born on 2 February 1990 and has lived all of her life at Unityville, Darwill Gardens Extension, via Olten Road, Arima uninterrupted until 2010 when the Claimants entered the said property. Applelonia pleaded that when the Claimants together with other persons entered the property her sister, Haley, called and alerted her. She was informed that the persons were armed with cutlasses and other items that could cause danger to her family. Applelonia denied that the property was vacant or inaccessible since they were in occupation of the said property at the material time. She pleaded that the said property was well planted with fruit-bearing trees, vegetables and other crops.

[27] Applelonia averred that by reason of her birth in 1990 and living her entire life on the property, together with her mother and grandmother who had been occupying the said property since 1965, whatever title the paper owners had to the property would have been extinguished by 2013.

[28] Haley stated that she was born on 11 April 1991 and has lived all of her life at Unityville, Darwill Gardens Extension, via Olten Road, Arima uninterrupted until 2010 when the Claimants entered the said property. Hayley pleaded that the Claimants and the other persons came to the gate and asked for permission to enter the said property but permission was denied. Hayley denied that the property was vacant or inaccessible since they were in occupation of the said property at the time. Hayley pleaded that the said property was well planted with plantains trees and other crops.

It is Hayley's pleaded case that the Claimants and their labourers came onto the property with a tractor and entered the property by driving the tractor unto the property damaging the fence, the planted crops and fruit-bearing trees. Hayley pleaded that she saw the

Claimants and their labourers proceed to chop down fig trees, plantain trees, soursop trees and other crops.

[29] Hayley denied that her grandmother, Edwina, was present and averred instead that Edwina was in Tobago on the day that the tractor came unto the property and that she called Edwina to inform her of what was happening. Hayley averred that Edwina returned to Trinidad at about 4pm on the same day. She also called Applelonia who was at work and she returned home.

[30] Hayley averred that by reason of her birth in 1991 and living her entire life on the property, together with her mother, her sister and her grandmother and the fact that her grandmother had occupied lots 36 and 36A, fencing the lots and planting crops since 1965, whatever title the paper owners had to the property would have been extinguished by 2013.

[31] The Defendants together counterclaimed as follows:

- (i) A declaration from the Court that the Claimants are not the *bonafide* owners and that the Claimants do not have any rights on the property occupied by the Defendants.
- (ii) A permanent injunction restraining the Claimants and/or their servants and/or their agents and/or their workmen and/or whomsoever from entering onto the Defendants' premises.
- (iii) Damages for trespass and demolition of fruit-bearing trees, plants and crops.
- (iv) Interest.
- (v) Costs.
- (vi) Such further and/or other relief and/or consequential orders and/or directions as this Honourable Court may deem just and/or appropriate.

[32] The Claimants, in reply, denied each and every allegation and fact in the Defendants' Defences. The Claimants averred that the portion of land, which the First Defendant allegedly cleared and planted in 1965, does not form part of the said property. It was

further averred that the Notice to Quit does not relate to the said property as it was not sent on behalf of the Claimants' predecessors in title and refers to a parcel of land comprising 9 acres, 3 roods and 1 perch; and not 13 acres, 3 roods and 20 perches, which is the larger parcel. The Claimants contended that the Notice to Quit purportedly issued to Charlene Thomas was in relation to an apartment and not any portion of land. The Claimants denied that the "Certificate of Comfort" concerns the said property. The Claimants also pleaded that the Defendants have not pleaded any sufficient particulars to establish a claim of adverse possession to the said property.

## **II. Law and Analysis**

[33] Considering that the Claimants did not appear at the trial, it meant that no evidence was led in support of their Fixed Date Claim and Statement of Case. Notwithstanding that they had complied with all material directions for trial including (i) the filing of their Reply and Defence to Counterclaim; (ii) the filing of list and bundle of agreed and not agreed documents; (iii) obtaining an interim injunction against the Defendants; and (iv) the filing of their witness statements, the Claimants never attended the trial. This was puzzling, to say the least. Nonetheless, rules of procedure must take their course. Accordingly, the Claimants' Fixed Date Claim and Statement of Case ought to be dismissed by virtue of their non-appearance at the trial. In this regard, as well, the interim injunction granted on the 26 July 2016 ought to be discharged.

However, the Defendants' Counterclaims remain to be resolved. As a result of the Claimants' absence at trial, all of the facts and evidence adduced by the Defendants remained untested under cross-examination. In those circumstances, the only issues for determination in this matter are issues of law, that is, whether in law, the Defendants are entitled to the declaration/reliefs sought given their untested evidence which effectively remained as undisputed evidence at trial.

[34] The Defendants in this matter are all family members. Edwina is the grandmother of Applelonia and Haley. They each filed a separate Amended Defence and Counterclaim to the Fixed Date Claim. However, their pleadings are in essence the same as well as the

reliefs sought. In that regard, I would deal with their counterclaims as one in the determination of this matter. The reliefs sought in the counterclaims are as follows:

- 1) **A declaration from the Court that the Claimants are not *bonafide* owners and that the Claimants do not have any rights on the property occupied by the Defendants and their family.**
- 2) **A permanent injunction restraining the Claimants and/or their servants and/or their agents and/or their workmen and/or whomsoever from entering onto the Defendants' premises.**
- 3) **Damages for trespass and demolition of fruit bearing trees and plants.**

I shall deal with each relief sought in turn.

**Relief 1: A declaration from the Court that the Claimants are not *bonafide* owners and that the Claimants do not have any rights on the property occupied by the Defendants and their family**

[35] With respect to this relief sought, the Defendants have not adduced any documentary proof that they have the paper title to the said property. In fact, the basis upon which they rely in claiming that the Claimants do not have any rights to the said property is premised upon a claim for adverse possession on their behalf.

Although the Defendants have not prayed in their counterclaims for an entitlement to the said property based on adverse possession, such relief can be gleaned from their pleadings, the unchallenged evidence and their submissions.

[36] Consequently, in order to succeed on their counterclaim for adverse possession, the Defendants must establish that they had been in continuous and exclusive possession of the said property for at least 16 years from the date that the Claimants' right to bring an action for its recovery first arose. Such is the law as stipulated in **Section 3 of the Real Property Limitation Act, Chap 56:03** which provides as follows:

*“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, or 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, shall have first accrued to the person making or bringing the same.”*

[37] The Court will have to determine the Defendants’ entitlement to adverse possession by counting from the day on which the Defendants and their family first entered into possession of the said property and assessing whether they had at least 16 years of continuous exclusive possession thereafter.

**When did the Defendants and their family commence possession of the said property?**

[38] It is Edwina’s case that she began occupation of the said property in 1965 along with her husband. They cleared the location for cultivation of fruit-bearing trees and short crops and eventually moved the family to the said property in 1976. It is Edwina’s case that she and her family occupied both Lots 36 and 36A, which is the said property.

Applelonia and Haley are Edwina’s granddaughters. It is their case that they have lived their entire lives at the said property together with their mother, Betty-Ann and their grandmother. They further pleaded that Edwina has occupied Lots 36 and 36A (the said property) since 1965 and thus, any paper title to the said property has been extinguished by 2013. Accordingly, their entitlement to the said property is premised upon their grandmother’s initial occupation of the said property.

[39] The Defendants all gave evidence in support of their respective counterclaims. Edwina maintained her pleaded case that she commenced occupation of the said property in 1965. However, both Applelonia and Haley did not give any evidence on when their

grandmother began occupation of the said property. Betty-Ann, Edwina's daughter and the mother of Applelonia and Haley, also gave evidence on their behalf but did not testify as to when Edwina began occupation of the said property.

[40] Further, by virtue of **Section 22 of the Real Property Limitation Act, Chap 56:03**, the Defendants' continuous possession of the said property must have been for at least 16 years prior to the commencement of these proceedings on 6 October 2014.

[41] It is well established that time for adverse possession begins to run only when the party claiming is in possession of the land adverse to that of the true owner. Therefore, the 16-year period in the case at bar would have to be counted from when Edwina first began to occupy the said property, which is, 1965 to 1981.

**Whether the Defendants had 16 years of continuous and exclusive possession over the said property from 1965 to at least 1981?**

[42] It has been well settled that a claim for adverse possession must comprise two essential elements: (i) a sufficient degree of physical custody and control (factual possession); and (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (the intention to possess). This was expounded in **J.A. Pye (Oxford) Ltd v Graham**<sup>1</sup>. It is understood that the paper title owner is deemed to be in possession of the lands vested in him and thus, the Defendants must show that they dispossessed him and were in exclusive possession of the said property for the 16-year period.

[43] The judgment of Slade J. in **Powell v McFarlane**<sup>2</sup> is instructive in providing guidance on what constitutes "possession". The Court stated that -

*“(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance,*

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<sup>1</sup> [2003] 1 AC 419

<sup>2</sup> [1977] 38 P & CR 452

*ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*

*(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”*

[44] Slade J went on to describe “factual possession” 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, 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.”*

[45] “Intention to possess” was also explained by Slade J in **Powell v McFarlane** (*supra*) as:

*“The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR in Littledale v Liverpool College [1900] 1 Ch. 19, as “the intention of excluding the owner as well as other people.” ... What is really meant, in my judgment, is that the animus possidendi involves the 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.”*

[46] Consequently, in order to assert a claim based on adverse possession, the onus is on the Defendants to satisfy the Court that Edwina not only had factual possession of the said property for the period of at least 16 years but that she also had the requisite intention to possess same to the exclusion of others including the paper title owner throughout that period.

[47] The pleaded acts of factual possession over the said property by Edwina are as follows:

- a. Clearing of the location in 1965;
- b. Planting of plaintain, soursop, breadfruit, chataigne, pommecythere;
- c. Planting of short crops including yam, dasheen and cassava;
- d. Fencing the said property with fencing wire;
- e. Construction of a small shack to store tools and garden supplies; and
- f. Construction of two-storey house built with mud downstairs and wood upstairs in the early 1970s.

[48] The Court is of the view that only the evidence of Edwina and Betty-Ann is relevant to this issue. Betty-Ann stated she was born in July 1971; therefore, she was alive throughout the 16-year period and can give evidence on what she observed. However, it must be noted that Betty-Ann would have been at a very tender age during that period. Applelonia and Haley, on the other hand, were born February 1990 and April 1991 respectively. As a result, they could not and did not give any evidence on the pleaded acts of factual possession throughout the period 1965 to 1981.

[49] Edwina maintained her pleaded case of the acts of factual possession from 1965. It is her case that she and her family occupied both Lots 36 and 36A from 1965. However, there are no particulars as to whether these acts were done on either Lot 36 or 36A, Lot 36A being the said property in dispute. This lacuna therefore invites the Court to speculate on the question as to what acts were done on which lot of land, which the Court is not permitted do.



[50] Betty-Ann, in her evidence, stated that she initially lived with Edwina and other members of the family in Cascade and that on some weekends she remembered that her mother would take her to Unityville. At that time, there was only one structure on the land. This structure consisted of an upstairs made of wood and a downstairs. Betty-Ann, however, was not helpful in terms of time, again leaving the Court to guess.

[51] She further stated that around 1980 or thereabouts, they moved completely to Unityville. This, however, contradicts Edwina's pleaded case and evidence that the family moved to Unityville in 1976. Betty-Ann further added that before they moved, the area was fenced using galvanized sheets. This again, contradicts Edwina's evidence where she stated that she and her husband purchased fencing wire and fenced the said property.

[52] Betty-Ann also stated that the area, which was fenced, was cultivated with various fruit trees such as mangoes, coconut, soursop, bananas and dasheen plants. Yet again, her evidence was stark naked in term of time. Furthermore, Betty-Ann did not specify whether these acts were done on Lot 36 or 36A, Lot 36A being the said property in dispute.

[53] Besides the clearing of the location, the planting of trees and crops in 1965 and the construction of the house in the early 1970s, there was no specified time given for any of the other acts as pleaded or given in evidence. The Court is not permitted to speculate as to when these acts could have been done and if they were done throughout the 16-year period, that is, from 1965 to 1981, nor can the Court determine, without cogent evidence, on which of the lots were these alleged acts carried out.

In any event, the Court is of the opinion that these alleged acts of factual possession were not sufficient in establishing that Edwina had and/or exercised a sufficient degree of physical custody and control over the said property for a continuous period of 16 years. Accordingly, I found that Edwina did not have factual possession over the said property (that is, lot 36A) for the requisite 16-year period, that is, 1965 to 1981.

[54] Although Edwina failed to satisfy the Court that she had factual possession over the said property for the 16-year period from 1965 to 1981, the Court can still look at another 16-year period within the time that Edwina pleaded that her family had occupied the said property.

However, from the pleadings and the evidence, there are no facts detailing any other acts of factual possession over the said property during any other period. Consequently, the Court is of the view that the Defendants' pleadings and evidence lacked the particulars necessary to prove a claim for adverse possession.

[55] Having failed to satisfy the first limb of the test, the Defendants' entire counterclaim must fail. It therefore negates the need for the Court to enquire into the second limb of the test, that is, whether the Defendants possessed the requisite animus possidendi over the said property throughout the 16-year period.

**Relief 2: A permanent injunction restraining the Claimants and/or their servants and/or their agents and/or their workmen and/or whosoever from entering onto the Defendants' premises**

[56] Having determined that the Defendants cannot succeed on a claim for adverse possession over the said property, the Defendants therefore have no rights to, nor any interest in, the said property. Consequently, the Court cannot grant any injunction for and on behalf of the Defendants restraining anyone from entering onto the said property.

**Relief 3: Damages for trespass and demolition of fruit-bearing trees and plants**

[57] Again, having determined that the Defendants have no rights to, nor any interest in, the said property, the Court cannot award damages for trespass and demolition of fruit-bearing trees and plants in these circumstances.

### **III. Disposition**

[58] Given the reasoning, analyses and findings above, the order of the Court is as follows:

#### **ORDER:**

- 1. The Claimants' Fixed Date Claim and Statement of Case both filed on 6 October 2014 be and are hereby dismissed on the basis of the non-appearance of the Claimants at the trial.**
- 2. The interim injunction granted in favour of the Claimants on 26 July 2016 be and is hereby discharged.**
- 3. The Defendants' Counterclaims filed on 14 January 2016 be and are hereby dismissed.**
- 4. There be no order as to costs on the Notice of Application filed on 14 July 2016.**
- 5. All parties to bear their own costs of both the Claim and Counterclaims.**

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**Robin N. Mohammed**  
**Judge**