

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(SUB-REGISTRY, TOBAGO)**

Claim No CV2016-00309

BETWEEN

GODFREY BATSON

BEVERLY BATSON

**(By their lawfully appointed Attorney Roger Simon by
Virtue of Power of Attorney dated 13th November, 2015
And Registered as No. DE201502846473D001)**

Claimants

AND

CARLYLE DICK

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Ms Samantha S. Lawson instructed by Ms Afiya Mottley for the Claimants

Mr Ernest H. Koylass SC and Ms Debbie Roopchan instructed by Ms Myrna D. A. Walters for
the Defendant

JUDGMENT

I. Background:

- [1] The Claimants, owners of Plot 9 of lands situate at Mt St George, Tobago (the “Property”) have brought this claim against the Defendant, who is the owner of Plot 8, which is adjacent to the Property on its Northern boundary. They seek, inter alia, injunctions restraining the Defendant from trespassing on the Property, damages in the sum of \$18,209.00 and a declaration of ownership of the Property.
- [2] Their case is quite straight forward. The contention arose sometime in the months of June to July, 2015, when the Defendant allegedly cleared a portion of land on the Property measuring 25 metres by 93 metres (the “Disputed lands”) without the consent or knowledge of the Claimants. By these acts, it is alleged that several trees and shrubbery were destroyed.

As a result, on the 9th and 10th November, 2015, the Claimants began erecting a fence on the Northern boundary of the Property so as to prevent any further acts of trespass. However, when attempting to access the Northern boundary through the Defendant’s land, the Defendant, on the said 10th November, refused permission. It is the Claimants’ case however, that the officers who were present with the Claimants and their agent, Mr Roger Simon, were able to convince the Defendant to allow them access. Upon gaining access to the Disputed lands, situate on the Northern portion of the Property, the First Claimant alleges that he caused 40 poles with concrete bases to be buried on its perimeter.

The following day, being the 11th November, 2015, the Claimants began constructing the chain link fence but left it incomplete. Upon returning the following day, it was discovered that 30 of the 40 posts that they erected were now missing. Mr Simon reported the missing posts to the Scarborough Police Station on even date. Thereafter, the Claimants proceeded to speak to the Defendant about the missing posts, who, admitted that he had caused his workmen to remove same and destroy the fence. On the Claimants’ version however, the Defendant also told them that he did not know what his workmen did with the posts.

It followed that part of the Claimants’ claim was the costs of erecting the fence which allegedly is the sum of \$18,209.77.

The day after, being the 13th November, 2015, the Defendant entered onto the Disputed lands and placed holes, which signalled to the Claimants that he intended to plant crops.

As a result, a pre-action letter dated the 18th November, 2015¹ was purportedly sent to the Defendant with allegations of malicious damage and trespass, seeking compensation. No response however, was received to this letter and it is the Claimants' case that the Defendant continues to remain on the Property without permission and thus, the claim herein.

- [3] The Defendant, in response, raised some preliminary challenges to the validity of the Claimants' claim. Firstly, he challenged whether the Power of Attorney authorised the Claimants' agent, Mr Roger Simon, to commence or continue these proceedings. Secondly, he averred that the Claimants have not complied with the **Foreign Investments Act Chap 70:07**, before owning any land in Tobago. Finally, he pleaded that this claim had become statute-barred and that any title had been extinguished by **Sections 3 and 22 of the Real Property Act, Chap 56:03**.

With respect to the claim, his case was that his Plot 8 was previously owned by Mr Horace Charles and that in 1980, he indicated to Mr Charles his intention to purchase a plot. Mr Charles's agent, Mr Bevon Toby, took the Defendant to Mr Charles's land, which, on the Defendant's version, was more or less a jungle at that time and pointed out an area known as Plot 8. The Defendant alleges that unknown to him, Plot 8, on its South Eastern boundary, extended some distance into Plot 9, the Property herein. This intersection of the two plots comprises the Disputed lands referred to in this claim.

The said Mr Bevon Toby told the Defendant that he was the owner of Plots 6, 7 and 9, and that Plot 8 was for sale for the price of **\$22,500.00** from Mr Charles. The Defendant proceeded to place a deposit of \$5,000.00 for same. He was then shown the access road for Plot 8, which was allegedly a road reserve running from the southern part of Plot 7 and was told by Mr Toby that he, the Defendant, should cut a road from that point and continue North between the boundaries of Plots 7 and 8.

¹ Incorrectly stated as 18th November, "**2016**" in the Statement of Case

The Defendant had entered into possession of Plot 8 prior to the completion of the Deed and began clearing same with Mr Toby's consent. He also cut the road as directed. It was also mentioned that the said Mr Toby had intimated to the Defendant that the access road to Plot 9 was through Windsor Road that existed in a different area.

Several months later, the Deed of conveyance registered as No 3757 of 1981 was executed by Mr Charles in favour of the Defendant and his wife, Harriet Dick. It is the Defendant's case that he was always of the honest belief that the Disputed lands fell within Plot 8.

In pursuance of his intended agricultural use of Plot 8, the Defendant prepared and formed terraces to enhance drainage and soil protection. He also cleared trees and terraced the entire of Plot 8 inclusive of the Disputed lands, which he terraced to a greater degree due to its steepness. Further, he pleaded that he cultivated Plot 8 inclusive of the Disputed lands with citrus trees and other crops and erected a wooden house for his workmen. PVC and galvanize pipes were also installed on the Disputed lands.

Sometime thereafter, the Defendant discovered from Mr Toby that the Southern boundary of Plot 8 that intersected with the Property was, in fact, State Lands². As a result, the Defendant's wife, Harriet, allegedly obtained a lease from the Tobago House of Assembly for the said State Lands and put the Defendant into possession of same. As a result of this lease, it is alleged that access to the remainder of the Property, i.e. Plot 9 less the State Lands, cannot be had unless one passes through Plot 8³.

On the Defendant's version, it was not until 1995, following a survey, that the Defendant discovered that Plot 8, as shown to him by Mr Toby, had encroached on the Disputed lands, which was really a part of the Property⁴. The Defendant duly informed the Claimant's predecessors in title, Hilda and Gerard Hosier that he had spent over \$75,000.00 in developing the Disputed lands and that he was not prepared to vacate same. He then proceeded to run a barbed wire fence along the South-Eastern boundary separating Plot 8.

² Para 27 of the Defence

³ Para 29 of the Defence

⁴ Para 31 of the Defence

In any event, it is the Defendant's Defence that the said Claimants' predecessors in title never made use of the Disputed lands. However, it was admitted and annexed to the Defence that in 2002, their (the predecessors in title) attorneys, De Nobriga, Inniss & Co and Lex Caribbean, had written the Defendant a letter. In it, the predecessors in title indicated that on the 8th September, 2002, when they visited the land, they had noted that the sign 'Private Land' had been removed "*once again*" and that the Defendant had planted pumpkin vines where the "*grass had been cut.*" The letter also referred to the evidence of Mr Gerard Kalloo, the Branch Manager of the Agricultural Development Bank, Tobago office from 1991 to 1995, who stated that the bank's surveyor had asked the Defendant to "*relocate water pipes from our clients' land*" and that the Defendant, in compliance, "*relocated the water pipes onto parcel 8, which is owned by him.*"

Despite the contents of this letter, the Defendant pleaded that he continued in exclusive possession and physical control of the Disputed lands with the intention of excluding all persons including the paper title owner up to the present time. He further reiterated that neither the Claimants nor their predecessors in title ever occupied the Disputed lands and that same had always remained in its "*pristine jungle state*".

Sometime in 2013, portions of the Disputed lands had been damaged by fire destroying the wooden building along with some of the trees. In response, the Defendant had his workmen restore the cultivation and rebuilt a concrete structure.

He admittedly cleared the Disputed lands sometime in June or July, 2015 as described by the Claimant and averred that such act was done in the normal course of maintenance of his project on his Plot 8.

Further, prior to the Claimants' installation of their fence posts, he, the Defendant, had protested and informed them of their trespass. He also informed them that any boundary issues had already been raised and dealt with by their predecessors in title who, to his mind, had abandoned the Disputed lands. In any event, the Defendant averred that he told the First Claimant, Mr Godfrey Batson "*that the road to the remainder of plot 9 lay on Windsor Trace and not through plot 8 nor the Disputed lands.*"⁵

⁵ Para 45 of the Defence

It was only when he returned on the 10th November, 2015, that the Defendant noticed that the Claimants had, not only trespassed on his lands and the Disputed lands, but also used his water supply to mix concrete and then left litter on Plot 8.

He admitted to removing the posts and that he also told Mr Simon, the Claimants' agent, that he had placed their fence posts on a nearby access road. He however informed Mr Simon that he, the Defendant, was not responsible for their whereabouts thereafter.

No admissions were made to the alleged costs of erecting the fence. Further, the Defendant's workmen were always on the Disputed lands working on his project.

In the circumstances, due to the Claimants' unlawful trespass on Plot 8 inclusive of the Disputed lands from the 9th to the 12th November, 2016 (should be 2015)⁶ along with the damage to some of the trees, the use of his water supply and the placing of materials and garbage without consent, the Defendant counterclaimed for, inter alia, an injunction restraining the Claimants from entering on the Disputed lands along with a declaration of ownership by way of adverse possession of same. Damages for trespass were also claimed.

[4] The Claimants were granted permission to file a Reply to the Defence and Counterclaim by Court order on the 29th April, 2016. Attendant to this Order were directions for disclosure, the filing of witness statements and evidential objections.

[5] In the Reply, the Claimant sought to rely on the contents of the Power of Attorney, which specifically authorised Mr Simon to commence these proceedings. Indeed, a quick perusal of the said Power of Attorney reveals that pursuant to Clause 4, Mr Simon was authorized to "*commence, prosecute, enforce and to defend, answer or oppose all actions suits and other legal proceedings and demands whatsoever touching any of the matters herein or any other matters in which we may hereafter be instructed or concerned...*"

Thus the Defendant's pleading on this issue was without merit.

⁶ See paragraph 57 of the Defence and Counterclaim filed 18th March, 2016

Further, it was pleaded that the Claimants are citizens of Trinidad and Tobago and therefore, the **Foreign Investments Act Chap. 70:07** does not apply.

- [6] The Court notes that **Section 2 (1) of the Foreign Investments Act Chap. 70:07** defines a foreign investor as *“an individual who is not a national of Trinidad and Tobago or another Member State...”*

A “National” is defined as *“(i) a citizen of a Member State; or (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such a Member State for the purposes of the laws thereof relating to immigration.”*

Thus, provided that the Claimants can prove that they are nationals and/or citizens of Trinidad and Tobago, this Act will not apply to them. In doing so, Mr Batson attached a copy of his birth certificate to his at GB1, which evidenced that he was born and therefore is a citizen of Trinidad and Tobago. Accordingly, the **Foreign Investments Act Chap. 70:07** does not apply to the Claimants in this matter.

- [7] They did admit however, that the acreage in the Deed DE200301820763D001 is greater than reflected in the survey. They however, wholly deny that their action is statute-barred.

They put the Defendant to proof of much of the Defence, however, while they did admit that the Southern boundary of Plot 8 that intersects with the Property is indeed State Lands, they expressly denied:

- i. That the Defendant cultivated the entirety of the Disputed lands with citrus trees and other crops. Rather, a recent site visit revealed that there are only 4 citrus trees on same and the Defendant has provided no proof that he has cultivated same;
- ii. That the Defendant installed a water supply as pleaded as he gave no dates for same;
- iii. That the Defendant’s wife obtained a lease from the Tobago House of Assembly in respect of the State Lands/Disputed lands;
- iv. That the only access to the Property is through Plot 8;

- v. That the Defendant continued in exclusive possession of the Disputed lands and dealt with same as his own with the intention of excluding the paper title owner;
- vi. That the Defendant did not need the Claimants' permission to treat with the Disputed lands;
- vii. That the Claimants committed any trespass by erecting the posts for their fence on the boundary line of the Disputed lands;
- viii. That the Claimants' predecessors in title had abandoned the Disputed lands;
- ix. That the Claimants mixed concrete using the Defendant's water supply;
- x. That the Claimants' title to the Disputed lands has been extinguished;
- xi. That the Defendant has been in possession of the Disputed lands.

In Defence to the Counterclaim, the Claimants relied on the facts as pleaded in their Reply and denied any allegations of unlawful entry to Plot 8, which they allegedly made in November, 2016⁷ (as incorrectly stated in the Defence) or in November, 2015. Therefore, they maintained that the Defendant was not entitled to any of the reliefs sought.

- [8] The Defendant filed three witness statements in support of his case: one of himself, his wife, Harriet Dick and Mr Leon Kirk, a Foreman of Agriculture who has known the Defendant since 1981. The Claimants' four witnesses were: Mr Seymore Alfred, a Land Surveyor, Mr David Pereira, a self-employed businessman who accompanied the Claimants on an initial visit to the Property in 2002, Mr Roger Simon, their agent and the First Claimant, Mr Godfrey Batson.

II. The Evidence:

- [9] The Defendant maintained his pleaded case in his witness statement. He confirmed that he was shown the boundaries of Plot 8 by Mr Toby and that at that time he did not know part of Plot 8 extended into the Property, such extended portion being the Disputed lands.

⁷ See paragraph 2 of the Defence to Counterclaim

He also maintained that at the time of purchase, the Property as well as Plot 8 was a veritable jungle and had no visible access roads.

He amplified his pleading that his cultivation of the Disputed lands with citrus trees are now over 35 years old.⁸

He also elaborated that it was in the year of 2000 that a surveyor from the Tobago House of Assembly had sent a surveyor to the area and demarcated the true boundaries. In doing so, there was some doubts as to the accuracy of the Defendant's boundaries and the Disputed lands but the Defendant stated that he maintained his possession of same and continued to use it as his own.⁹

With respect to the alleged lease that his wife obtained over the State Lands, the Defendant stated that a copy of same was not available.

Mr Dick added that he had been in exclusive possession of Plot 8 and the Disputed area for over 36 years. Further, he also introduced that it was in 1995, following a survey, he discovered that Plot 8 encroached on the Disputed lands which was, in fact, a portion of the Property.¹⁰

Therefore, it now appears that there were two surveys done on the lands— one in 2000 and a previous one in 1995.

He then proceeded to add further information surrounding the letter sent by the Claimants' predecessors in title to him through their attorneys. He added that there were two letters sent to him but that he could not find one.

It was also maintained that neither the Claimants nor their predecessors in title ever occupied the Property except for the Disputed lands, which the Defendant claims he cleared and cultivated.¹¹ Evidence that the terracing of the Disputed lands and Plot 8 occurred in 1980 to 1981 was also introduced.¹²

⁸ Para 19 of his witness statement

⁹ Para 22

¹⁰ Para 26

¹¹ Para 31

¹² Para 35

The Defendant stated that the Claimants had trespassed through the leasehold property, which he owned by virtue of the alleged lease from the Tobago House of Assembly. He reiterated that he told Mr Batson that the access road to the remainder of the Property less the leasehold land was through Windsor Trace and not through Plot 8.

[10] The Defendant's wife, Harriet, gave evidence that largely corroborated the pleadings and evidence of her husband.

She reiterated that Horace Charles was the owner of the entire parcel of land in 1980, which he subdivided into smaller plots. She intimated that her husband had expressed to her, and that she had agreed, that he should purchase a plot of land from Mr Toby in 1980.

She mentioned the survey done by the Tobago House of Assembly in 2000 with respect to the Southern portion of Plot 8, which showed an encroachment onto State Lands by the Defendant. Also, she affirmed that this did cause them to question their boundaries in relation to the Disputed lands. She maintained that she, as co-owner of Plot 8, applied for and obtained a lease for the State Lands and attached a letter purporting to confirm that position.

This unsigned letter is dated the 3rd January, 2000 and states that the Secretary for Public Administration recommends that the State Lands be leased to Harriett for 30 years due to her 20 years of occupation and cultivation of same.¹³ No stamp or signature is on this letter, however, to confirm its validity.

She confirmed that by putting her husband into possession of the State Lands, access to the remaining portion of Plot 9 could only be had through the State Lands, which had now become the property of the Defendant.

However, she differed from her husband's evidence in the subsequent paragraph, where she stated that *sometime thereafter*, it was discovered that there was an encroachment on Plot 9, to which her husband indicated that he was not prepared to vacate¹⁴.

¹³ See attachment H.D.1

¹⁴ Para 14 of Harriett's witness statement

This encroachment was the Disputed lands and her husband had stated that such discovery occurred following a survey in 1995 and not after 2000 as is her evidence.

She amplified the pleading that her husband had been in continuous and exclusive possession of Plot 8 by adding that Plot 8 now comprises 3 parcels: Plot 8 as described in their Deed; the Disputed lands, which he has occupied exclusively since 1980; and the State Lands which they occupy under the 30 year lease.

She corroborated her husband's evidence that neither the Claimants nor their predecessors in title ever occupied the Property, which remained in a jungle-like state save for the Disputed lands, which her husband cultivated and cleared.

The remainder of her witness statement confirmed and corroborated the Defendant's pleaded case and evidence.

[11] The Defendant's final witness, Mr Leon Kirk, stated that he was well acquainted with the Disputed lands which, by his evidence, formed part of the Defendant's land, Plot 8.

He stated that in 1982, the Defendant spoke to him about employing him and other workers on a part time basis for an agricultural project which he had embarked upon. In pursuance of that employment, the Defendant took him and other workers, who are now all deceased, to Plot 8 and pointed out same to them.

Mr Kirk gave evidence that upon seeing Plot 8, he noticed that all of it had been cleaned and cleared and that the surrounding lands consisted of densely forested areas. Therefore, it was his evidence that the boundaries of the Defendant's land were demarcated by the cleared areas. He added that the Disputed lands comprised sloping grounds and that the Defendant directed him and the workers to work both on Plot 8 and the Disputed lands.

The witness stated that he was responsible for cultivating and spraying Plot 8 with control chemicals and that he had cultivated several crops on the Disputed lands. He was also responsible for overseeing the drain works and clearing the shrubbery and undergrowth.

It was his evidence that the terracing of the Disputed lands began in July, 1982 and was completed in early October of the same year.

Mention was made of planting fruit trees on the lower portion of the Disputed lands and pineapples on the upper parts. Other citrus crops were cultivated on the Disputed lands.

He corroborated the Defendant's case on all their issues including the fact that after the fire, the Defendant had rebuilt a concrete shed on the lands. He also affirmed that since he began cultivating Plot 8 in 1982, the boundaries have not changed and that to his knowledge, no one has ever interfered or disturbed the Defendant's use and enjoyment of the Disputed lands.

His evidence is that he continues to work on both Plot 8 and the Disputed lands and that he was there in early June, 2016 and is carded to return in August, 2016.

[12] The Claimants' witness, Seymour Alfred, stated that he obtained his qualification as a licensed surveyor in 2008 and that he was instructed by the First Claimant, Mr Batson, in 2015 to re-identify the Northern boundary line of the Property described as Plot 9 in the survey annexed to Deed No DE200301820763D001.

His evidence was that while doing his survey, he noticed that the boundary marks were found by pieces of iron, which he replaced with wooden pickets in the same area and flagged. He observed that there was an encroachment on the same Northern boundary by a portion of concrete cesspit measuring 1.2 metres by 2.4 metres.

However, he stated that despite preparing the relevant notice and giving the First Claimant instructions to notify the Defendant, on the date of the survey, no one was present.

[13] Roger Simon's evidence was a bit more substantial. He stated that he knows that the Claimants own the Property and that the Defendant owns Plot 8 to the North of the Property. He further gave evidence that the Defendant was involved in Politics and in charge of Agriculture in Tobago prior to 2001 and that after his political party lost the election, he, the Defendant, migrated from Tobago and lived abroad for an extended period of time only to return about 5 years ago.¹⁵

¹⁵ Para 4 of Roger's witness statement

He also stated that the Claimants also reside abroad in England and that, from about 2014, he has acted as the caretaker for the Property. This responsibility requires him to clear the Property of overgrown bushes and ensure that no one enters same without permission. He then referred to the Power of Attorney given to him by the Claimants.

He supported the Claimants' case thereafter, by mentioning the Defendant's trespass by clearing the Disputed lands in June/July, 2015 and the resulting destruction of the trees, etc. The pleaded case with regard to his erection of a wired fence between the 9th to the 12th November, 2015 was also maintained.

He adduced photographic evidence of where the Defendant removed his fence posts and confirmed the cost of labour and materials involved in his construction of same as pleaded.

He specifically stated that he delivered the Claimants' pre-action letter of the 18th November, 2015 to the Defendant.

[14] Mr David Pereira stated that he accompanied the Claimants to visit the Property and was shown the cadastral sheet. He observed that there was a concrete house on the North of the Property with vegetation nearby.

His evidence was that since 2002, he had visited the Property with Mr Batson and that in 2015 and 2016 he made subsequent visits with the permission of the Claimants' agent. Further, it was only in November, 2015, that he first noticed that the Disputed lands on the Northern boundary of the Property had been cleared and that there were short crops that were not yet bearing or blooming along with other holes that appeared to be carded for more crops.

He confirmed that the Claimants commenced construction of the fence in 2015, to which he received payment for the provision of tools and labour. He stated that he had receipts representing the total monies received from Mr Batson in the sum of \$11,455.00.

He again visited the Property in February, 2016 with Roger Simon, the agent, and again observed short crops on the Disputed lands along with workmen. The two had a conversation with the workmen after which the workmen left the Disputed lands.

[15] Finally, Mr Batson, the First Claimant, gave evidence that was similar to his pleaded case.

He confirmed that he was born locally and that his wife, Beverly Batson, is Jamaican and a CAIRCOM national and therefore, they are entitled to purchase lands in Tobago. It was maintained that they are owners of Plot 9, the Property. He stated that prior to his purchase of the Property in 2002, he visited the Property with his real estate agent and observed the boundaries. He also noticed citrus trees and banana suckers thereon. It was confirmed that the Defendant lived nearby on Plot 8 which is to the immediate North of the Property.

He stated that the Defendant was not living on Plot 8 from 2003 to 2015, such absence was confirmed by the Defendant's wife.¹⁶ It was now his evidence that he had retained a caretaker by the name of Junior Barrington to look after his Property until 2014, and thereafter, he retained the services for his agent, Roger Simon.

He reiterated the act of trespass by the Defendant in June or July 2015 and added that in October, 2015, he retained the services of a land surveyor, the said Seymour Alfred, to re-establish the Northern boundary mark of his Property. He also added that he had notified the Defendant of the survey to be conducted. He then visited the Disputed lands on the 8th November, 2015 after his surveyor, Mr Alfred, had re-established the Northern boundary marks by placing wooden pickets and flags. In this visit, his evidence is that he noticed a cesspit on the Disputed lands.¹⁷

The events as pleaded from the 9th to the 12th November, 2015 were maintained save for the fact that he added that there was no fence on the Disputed lands when he purchased his Property nor prior to his attempt to construct one.

With respect to the 10th November, 2015 when the Defendant allegedly prevented his agent and workmen from passing through Plot 8 to access the Disputed lands, his evidence was that Roger Simon had called police who were then able to convince the Defendant to allow them access to the Disputed lands.

¹⁶ Para 8 of Godfrey's witness statement

¹⁷ Para 15 *ibid*

It was the day after that he noticed that his 40 poles had been removed by the Defendant. Therefore, on the 13th November, 2015, he gave instructions via a Power of Attorney to Mr Simon to commence proceedings against the Defendant.

It was maintained that a pre-action letter was sent to the Defendant, to which he failed to respond and that the total cost of labour and materials in erecting the chain link fence amounted to \$18,209.77.

[16] The Defendant filed his evidential objections to the witness statements of the First Claimant, Roger Simon and David Pereira on the 30th August, 2016. The Claimant objected to certain paragraphs in the witness statement of Carlisle and Harriett Dick on the 8th and 12th September, 2016. The Defendant filed its response on the 28th September, 2016.

[17] The trial was heard on the 1st and 2nd December, 2016. Representing the Claimants was Ms Samantha Lawson and Mr Ernest Koylass S.C. was for the Defendant. On the first day, the Court was made aware that Mr Roger Simon, agent and witness for the Claimant, could not be located and therefore, would not be available for cross examination¹⁸. It was also agreed between the parties that they will not be taking evidential objections and thus, all evidence would be admitted with the Court's discretion to apply such weight as it deemed fit.¹⁹

[18] Written closing submissions were filed by the Defendant on the 22nd February, 2017 and by the Claimants in response on the 4th April, 2017.

III. Submissions:

[19] Mr Koylass SC, on behalf of the Defendant, submitted that it was clear from the evidence that the Claimants knew nothing of the lands from the 1980's until 2003 when the Claimants, Mr and Mrs Batson, purchased Plot 9. Further, he advanced that none of their witnesses could attest to anything occurring on the lands during that period. In these circumstances, he submitted that the Court should have no difficulty in finding that the

¹⁸ NOE Page 3, lines 16 - 18

¹⁹ NOE Page 5, lines 14 - 21

Defendant's entry, possession and control of the Disputed lands occurred according to his client's case.

It was submitted that the Defendant had adduced unchallenged evidence that he had entered into possession of Plot 8 as shown to him, which included the Disputed lands, and cleared and cultivated same from 1980/1981. Thus, the Defendant would have been in factual possession of the Disputed lands from that date until 2002 when the Claimants secured paper title to Plot 9. It was also submitted that the Defendant had the necessary intent to have dispossessed the Claimants' predecessors in title.

In any event, counsel contended that, due to his client's unchallenged evidence—that in 1995, he, the Defendant, had indicated to the Claimants' predecessors in title that he would not vacate the Disputed lands upon being informed of his encroachment coupled with his conduct of remaining on same treating it as his own- the Defendant's intent to extinguish their title to the Disputed lands was proved. In any event, counsel also contended that it was unchallenged evidence that the said predecessors in title left Plot 9 in a jungle-like state.

Thus, by 1997, which prior to the Claimants' purchase of Plot 9, their predecessors' title to the Disputed lands had already been extinguished, the Defendant was well within his rights to prevent them from passing proper title of the Disputed lands over to the Claimants.

Counsel then relied on cases such as **Olga Charles v Harrichand Surju and Lewis Harrichand**²⁰, and **Leonie Dinah Morris, Joyce Claire Griffith v Hugh Hackett**²¹, which effectively stated that a paper title owner was not entitled to sit by and rely on the Defence that title had not been proved against them.

Rather, counsel submitted that the Claimants needed to do more. For instance, it was his submission that they should have included their immediate predecessors in title as witnesses to give evidence on their involvement with Plot 9 and the Disputed lands. As stated in the cases cited, counsel submitted that the Claimants, as the current paper title

²⁰ Civ App No 50 of 1960

²¹ Civ App No 128 of 1980

owners, had to provide evidence of the history of the land prior to their obtaining title so as to “*establish the integrity of the paper title obtained under a Deed against the Defendant’s claim for adverse possession*”. Further, he relied on the case of **Leonie Dinah** *supra*, which stated that the failure to exercise any form of possession over the land by the Claimants may, if the Defendant’s evidence is acceptable, be fatal to the their claim.

In any event, he contended that the Defendant’s belief that the Disputed lands fell within his Plot 8 means that his client possessed the necessary *animus possidendi* even if such belief was erroneous.

With respect to the claim for damages in the sum of \$18,209.00, counsel submitted that such damages were not specifically pleaded with a schedule of damages and therefore, not properly proved. This submission was based, in part, on the fact that no pleading or evidence was given of any attempts by the Claimants to recover the posts which the Defendant had moved. In any event, the claim for damages is premised on the Claimants being the true owners of the Disputed lands. Thus, if it is found that such title had been extinguished, then the Defendant was entitled to remove the posts.

[20] In response, Ms Lawson submitted that prior to late 2015, it is the Claimants’ case that the Defendant did not plant any crops on the Disputed lands. Further, having raised adverse possession in its Defence and Counterclaim, she submitted that the burden rests on the Defendant to prove same. In doing so, she submitted that the Defendant was required to (i) specify the acts he relies on to prove such; and (ii) describe the Disputed lands in some detail. To the contrary, however, she submitted that the Defendant’s evidence only proved that the Claimants’ predecessors in title controlled the Disputed lands. This coupled with the Defendant’s failure to describe with any degree of particularity the Disputed lands occupied for the 16 years means that his counterclaim must be dismissed.

In support, the Guyanese case of **West Bank Estates Ltd v Shakespeare**²² was cited where the Privy Council upheld the Judge's decision that failure to properly describe the land on which adverse possession is asserted was fatal to such a claim.

Further, she submits that the Defendant has failed to identify the Disputed lands on a survey plan or provide any evidence that it was cultivated. Moreover, the Defendant's pleaded acts of possession were intermittent and discontinuous. This, she submitted, was demonstrated by the fact that in 2003, when a survey was done by Mr Lyndon Antoine, the Defendant was not living in Trinidad and Tobago.

Ms Lawson then delved into the life span of the crops that the Defendant allegedly cultivated from 1981, which, she submitted, ranged from 14 weeks to 3 months.²³ Therefore, it was her argument that one cannot conclude an inference of cultivation from 1981 for any extended period of time. Further, no evidence was adduced to show that the Defendant harvested or made use of his agricultural produce.

With respect to the citrus trees which, she submitted, were bi-annual crops, the same argument applies, that no evidence was given of the harvesting of these trees. She relied on the case of **Cobham v Frett (BVI)**²⁴ to submit that intermittent activities, such as cutting down trees, the manufacture of charcoal, occasional grazing of cows and so on, do not constitute unequivocal and clear acts of adverse possession.

It was also submitted that from the cross-examination of Mrs Dick, it was her evidence that her husband, the Defendant, did not commence cultivation of cash crops on the Disputed lands until 2000.²⁵ Further, the letter from Lex Caribbean confirms that the first encroachment onto the Disputed lands occurred in 2000 and thus, the allegation of cultivation from 1981 would be erroneous. In fact, she submitted that the Defendant's own witness, Leon Kirk also known as Tim Kirk, stated that the Defendant's presence in the jurisdiction was intermittent during the period 2001 to 2009. Further, Mr Kirk did not give evidence that he sprayed any crops on Plot 9 or the Disputed lands.

²² 1967 1 AC 665

²³ Para 34 of Claimants' submissions

²⁴ 2000 UKPC 49

²⁵ Para 42 *ibid*

In this context, counsel submitted that the Defendant could not have discharged his legal and evidential burden to show a right to occupation and control over the Disputed lands. In support, reliance was also placed on the local case of **Ramcubair v Dhanessar**²⁶ to make the argument that *“none of the periodic changes allowed the Defendant to accumulate the necessary time period of 16 years required to dispossess the Claimants or their predecessors in title”*.²⁷

Ms Lawson also sought to argue that by acknowledging in the two letters dated in 2002, the ownership of the Claimants’ predecessors in title and their right to Plot 9 and the Disputed lands, there can be no case for adverse possession. These letters, she submitted, showed that the Defendant was notified of his encroachment onto the Disputed lands since 1991 to 1995. Therefore, by acknowledging the paper title owner in 1991-1995, and acting on their request to cease his encroachment and remove whatever items he placed on the Disputed lands at that time, the Defendant cannot sustain its claim in adverse possession. In support, the case of **Edington v Clark**²⁸ was submitted to show that the letters constituted an acknowledgment of the paper title owner.

Thus, in her opinion, any claim for adverse possession which began in 1981 would have ceased in 1991- 1995. Similarly, any such claim commenced thereafter would cease in 2002, when the two letters were written²⁹.

In any event, Harriett Dick was not aware of the boundary to Plot 9 until 1995 when the Tobago House of Assembly did their survey and could proceed no further into Plot 9 because it remained forested.

Further, counsel reminded the Court that the Defendant does not live on his Plot 8 or on the Disputed lands. Moreover, the cesspit thereon has never been used and, based on the evidence of Mr Kirk and Mrs Dick, was constructed in 2009 - 2010 and thus, cannot amount to encroachment for 16 years. Ms Lawson further contended that it is also unclear

²⁶ HCA No 3990 of 1995

²⁷ Para 47 of the Claimants submissions

²⁸ 1964 1 QB 367 CA

²⁹ Para 50 of the Claimants submissions

whether the alleged cultivation of crops occurred on Plot 8, the State Lands or the Disputed lands.³⁰

IV. Law:

[21] It is clear that the material issue in this claim is determining whether the Claimants' title to the Disputed lands had been extinguished by virtue of the Defendant's adverse possession. For it is only when such a finding is made that this Court can determine whether the Defendant's act of clearing the Disputed lands in June – July, 2015 amounted to a trespass and conversely, whether the Claimants act of erecting a chain link fence in November, 2015 was illegal. It therefore follows that a finding of adverse possession will be dispositive of this claim.

Thus, it is logical to begin by setting out the law on adverse possession.

[22] To succeed in its counterclaim for adverse possession, the Defendant must establish that he had been in continuous possession of the Disputed lands for at least 16 years from either (i) the date that the Claimants right to bring an action for their recovery first arose; or (ii) the date from which the Defendant first entered unto the Disputed lands and/or had a right to bring the adverse possession action. Such is the law as contained in **Section 3 of the Real Property Limitation Act, Chap 56: 03:**

*“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.**”*

[23] It is the Defendant's case that his possession of the Disputed lands occurred long before the Claimants' involvement with Plot 9. As such, the Court will determine his entitlement

³⁰ Para 61

to adverse possession by counting from the day on which Mr Dick first entered into possession of the Disputed lands and assessing whether he had at least 16 years of continuous exclusive possession thereafter.

However, determining this date is no straightforward task. For one, it was not admitted by the Claimants that the Defendant became the owner of Plot 8 by virtue of Deed of Conveyance No. 3757 of 1981. However, considering that the Defendant has produced the Deed evidencing same, there is nothing to suggest that this is not the case. More importantly however, is the Claimants' disputation of the Defendant's pleading that he entered into possession of the Disputed lands from 1981 by his acts of terracing and cultivation. Accordingly, the Defendant's first task, and by extension, the first material issue for this Court to decide, is the date at which the Defendant first occupied the Disputed lands and treated same as his own.

When did the Defendant first occupy the Disputed lands?

[24] Surprisingly, assistance on this issue was found in the First Claimant's evidence-in-chief by way of a **Title Report** that Mr Batson had caused to be executed over Plot 9. From this Report, it is clear that Plot 9 had been conveyed by the Agricultural Bank of Trinidad and Tobago (ADBTT) to the Claimants immediate predecessors in title, Ralph and Hilda Hosier, on the 30th August, 1993 by Deed No. 13446 of 1993. Prior to this, it was discovered from the recitals of Deed No. 13446 of 1993, that Bevan Toby had owned Plot 9 and had mortgaged it to the ADBTT on the 29th April, 1980.

[25] Thus, this evidence lends support to the Defendant's pleaded case that the said Bevan Toby was, at the time, still the owner of Plot 9 and had showed him the boundaries between his Plot 9 and Plot 8, which the Defendant expressed an interest in purchasing back in 1980. He stated that Plot 8, as showed to him, had incorrectly included the Disputed lands as part of his own³¹. The Claimants in reply made no admission to this pleading as they were, no doubt, strangers to same considering that their knowledge of the lands arose only in 2003. In any event, their counsel specifically stated in her

³¹ Para 11 of the Defence.

submissions that the Claimants do not accept that the Defendant was in possession of the Disputed lands from 1980/1981.

[26] The Defendant's case on the issue however, was solid and consistent. He maintained his pleadings in his witness statement that Bevan Toby had pointed out the boundaries of Plot 8 to him in 1980 and that unknown to him, the Disputed lands had incorrectly been included as part of his Plot 8³². Further, he gave evidence that he entered into possession of Plot 8 prior to the Deed of Conveyance in 1981 and proceeded to clear Plot 8 with the consent of Mr Toby.³³ Moreover, he was of the honest belief that the Disputed lands fell within Plot 8 and stated that he proceeded to terrace and cultivate the Disputed lands³⁴. He also installed a water supply on the Disputed lands.³⁵

His wife corroborated his evidence in this regard.³⁶ She did not, however, make any specific reference to the Disputed lands during this early occupation of Plot 8 by the Defendant. On her evidence, it was only after the year 2000 that any mention was made of the encroachment onto the Disputed lands.³⁷

The Defendant's case, however, was especially supported by Mr Leon Kirk, who gave written evidence that he was an employee of the Defendant in his agricultural project on Plot 8.

Mr Kirk stated that he was well aware of the Disputed lands that form part of the Defendant's lands.³⁸ He stated that in 1982, when the Defendant approached him about employment, he noticed that the Defendant's land was already cleaned and cleared.³⁹ He portrayed his familiarity with the Disputed lands by describing it as sloping land with the upper portion being steeper than the lower portion.⁴⁰ He specifically gave evidence that he was responsible for spraying and cultivating the Defendant's land inclusive of the

³² Para 6 of Godfrey's witness statement

³³ Paras 13 & 14 of his witness statement

³⁴ Paras 15, 18 & 19 of his witness statement.

³⁵ Para 21

³⁶ Paras 8 & 9 of Harriett's witness statement

³⁷ Para 14

³⁸ Para 4 of Leon's witness statement

³⁹ Para 9

⁴⁰ Para 10

Disputed lands with several crops including cabbage, broccoli, etc.⁴¹ He mentioned that he and other workers terraced the Disputed lands in 1982⁴².

At trial, Ms Lawson was unable to weaken the credibility of either of the Defendant's witnesses on this issue. She tried to elicit from Mr Kirk and Mr Dick that they knew that the Disputed lands were not part of Plot 8 from inception.

Mr Dick stated that when he first purchased Plot 8, a survey plan of same was not available. Ms Lawson put to Mr Dick that that statement was untrue but Mr Dick maintained that no survey plan was attached to the Deed.⁴³

Thereafter, she tried unsuccessfully to challenge Mr Dick's evidence on this issue but Mr Dick was unshaken in his responses that there was no survey for Plot 8 at the time of purchase and that Mr Toby had pointed out the boundaries to him.

It was also confirmed that from Mr Kirk's *viva voce* evidence that, in Mr Kirk's understanding, the Defendant's land included Plot 8 and a piece of Plot 9, which was the Disputed lands⁴⁴ and which comprised approximately an acre.

[27] In this Court's opinion, Mr Kirk was a convincing witness. He was able to describe the boundaries of Plot 8 and also stated the wage he earned under the employ of the Defendant. Ms Lawson tried to question him heavily about the details of his employment and whether he received receipts for his payment but in this Court's opinion, there was nothing to suggest that his evidence was fabricated.

[28] To the contrary neither the Claimants' nor any of their witnesses could give any evidence on what occurred on either Plot 8 or Plot 9 at any time prior to their occupation in 2003.

In fact, it was clear from Mr Koylass S.C.'s examination of the Mr Batson that counsel intended to elicit such evidence from him.

Mr Batson confirmed his ignorance of the lands prior to his purchase of Plot 9 in 2003. His *viva voce* evidence on the issue was as follows: (i) that during the 1980s he was in no

⁴¹ Para 12

⁴² Para 15

⁴³ NOE Page 50, lines 36 - 42

⁴⁴ NOE Page 33, lines 33 - 39

way connected or concerned with Plot 8 or Plot 9; (ii) that during the 1980s and the 1990s, he did not know of Plot 8 or Plot 9; and (iii) that during the 1980s and 1990s he never visited Plot 8 nor Plot 9.

Thus, he was forced to agree that he had not been to the lands, inclusive of Plot 8 or Plot 9, prior to 2002.⁴⁵ In fact, Mr Batson also admitted that he had no idea what his predecessors in title, who owned Plot 9 from 1993 to 2003, “*did or didn’t do with the lands*”⁴⁶.

Thus, it was clear from Mr Batson’s evidence that he could not confirm or deny whether the Defendant, indeed, occupied the Disputed lands as though it was his from 1981 to 2001 as pleaded. Further, Mr Batson admitted that none of his witnesses could lay any challenge to that fact.⁴⁷

[29] Therefore, the conclusion of this Court on this issue is patent. Due most notably to the unchallenged evidence of the Defendant and his witnesses, the Court finds that the Defendant entered into occupation of the Disputed lands at least in 1982 and therefore his right to bring an action for adverse possession began in 1982, as substantiated by Mr Leon Kirk.

[30] Further, by virtue of **Section 22 of the Real Property Limitation Act, Chap 56:03**, the Defendant’s continuous possession of the Disputed lands must have been for 16 years prior to the commencement of these proceedings on the 4th February, 2016. Thus, provided that the Defendant can show that he had continuous and exclusive possession of the Disputed lands from 1981 to 1997, this Court will grant his Counterclaim and accordingly, dismiss the Claimants’ claim.

Whether the Defendant had 16 years of continuous and exclusive possession over the Disputed lands from 1981 to the 4th February, 2016?

[31] It has been well settled both in English law as well as in the law of this jurisdiction that a claim for adverse possession must comprise two essential elements: (i) a sufficient degree

⁴⁵ NOE Page 9, lines 25 - 42

⁴⁶ NOE Page 10, line 50

⁴⁷ NOE Page 12, lines 6 - 19

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.)⁴⁸ Further, it is understood that the paper title owner is deemed to be in possession of the lands vested in them and thus, the Defendant must show that he dispossessed them and was in exclusive possession of the Disputed lands for the 16 year period.⁴⁹

The Defendant's acts of possession over the Disputed lands:

[32] Mr Dick's acts of possession have been outlined above as taken from his evidence-in-chief. His evidence was that he treated the Disputed lands as his own by terracing and cultivating same with citrus trees and other crops. Further, he erected a wooden house and installed a water supply thereon.⁵⁰ No specific dates for these acts were given in his witness statement but it was stated that the cultivation of the plants occurred on a seasonal basis⁵¹.

This evidence was corroborated by Mr Leon Kirk, who stated that he was responsible for spraying and cultivating the Disputed lands⁵² and specifically stated that he terraced the Disputed lands in July, 1982⁵³. The wooden building was purportedly erected in 1985 to enable workers to change and store the produce and a water connection from WASA was established by the Defendant for Plot 8 inclusive of the Disputed lands.⁵⁴

At trial, Mr Kirk confirmed much of his evidence. He maintained that the part of Plot 9 that connected with Plot 8 was terraced by him and the other four workers. He even detailed that they made about 33 terraces over an area of about 15 to 20 feet from July to October, 1982.⁵⁵ Thereafter, his evidence was that they planted crops on both Plot 8 and the part that intersected with Plot 9. Details of the crops planted were also given in Mr Kirk's *viva voce* evidence.⁵⁶ However, he did admit that from 2001 to 2009, the

⁴⁸ J. A. Pye (Oxford) Ltd v Graham 2003 1 AC 419

⁴⁹ Dipnarine & Ors v Dipnarine Civ App. No 43 of 2010

⁵⁰ See paras 19 – 21 of Godfrey's witness statement

⁵¹ Para 20 of Godfrey's witness statement

⁵² See para 12 of Leon's witness statement

⁵³ See para 15

⁵⁴ Paras 22 and 24

⁵⁵ NOE Page 39, lines 4 - 28

⁵⁶ NOE Page 39, lines 30 – Page 31, line 11

Defendant was in and out of the country and that no short crops were planted during this time.⁵⁷

As to the reason why the evidence of such cultivation is no longer available, Mr Kirk corroborated the Defendant's case that a fire ravaged the lands in 2009 destroying all the crops. Mr Kirk, however, first stated that at the time of the fire, the wooden building had already changed to a concrete one but later recanted and gave evidence that it was the fire that destroyed the wooden building and that it changed to a concrete one thereafter. It was in his *viva voce* evidence that Mr Kirk first made any mention of there being a second fire in 2013.⁵⁸

[33] Aside from that minor mix up, the Court viewed Mr Kirk to be an unshaken and credible witness on the issue at hand. He corroborated the Defendant's evidence of possession over the Disputed lands by virtue of his cultivation, terracing and construction of a wooden shed from 1982 when Mr Kirk came under the Defendant's employ. As stated above, none of the Claimants' witnesses could challenge this evidence as they knew nothing of the lands prior to 2003.

[34] The Court therefore accepts the Defendant's evidence of his acts of possession over the Disputed lands, i.e. terracing, cultivating and erecting a wooden shed and that same commenced in either 1981 or 1982.

[35] Ms Lawson was more aggressive in challenging the Defendant's case on the issue of whether his possession over the Disputed lands was exclusive and continuous for 16 years from 1981.

Firstly, she directed her examination of Mr Dick to the contents of the letters adduced in his witness statement as exhibit "CD2". She referred specifically to the letter of the 27th March, 2002, which alleged that he had encroached on the land of the Claimants' predecessors in title. Mr Dick, however, stated that he was out of the country when this letter was sent and that it was his attorneys who issued the response.⁵⁹ She also noted the letter dated the 2nd October, 2002, whereby it was stated that Mr Kalloo, as Branch

⁵⁷ NOE Page 40, line 19

⁵⁸ NOE Page 30, lines 26 - 47

⁵⁹ NOE Page 57, lines 22 - 27

Manager of ADBTT, had given evidence that a surveyor had requested that Mr Dick remove his water pipes from Plot 9 and that Mr Dick had complied.

Mr Dick, however, denied, for the first time, that he ever complied with any request by the ADBTT's surveyor to relocate his water pipes from their client's land to his Plot 8.⁶⁰ He also accepted that he never put such a denial in his witness statement. It was then suggested to Mr Dick that from 2002, he was abroad and therefore was not encroaching on Plot 9, to which Mr Dick denied and reaffirmed that he was always in occupation of that land, being the Disputed lands.⁶¹

Ms Lawson also sought to question the Defendant's wife on the contents of these letters. She too stated in the witness box that she was not aware of any request by Mr Kalloo for her husband to relocate any water pipes from Plot 9 onto Plot 8.⁶² When asked whether she ever stated in her witness statement that the Defendant never removed any pipes as requested, Mrs Dick responded:

*"I gave a witness statement and I said certain things in the witness statement and I stand by what I said in the witness statement. So I am dealing with what was said in the witness statement."*⁶³

Ms Lawson did not probe for a clearer answer and instead, moved onto another topic.

[36] Ms Lawson's second strategy was to submit that the acts of cultivation and terracing were insufficient to amount to continuous possession. She relied on the Privy Council case of **Cobham** *supra*, however, in this Court's opinion, this case is distinguishable on its facts.

In that case, the acts done by Mr Frett, who was claiming adverse possession from since 1973, included "*cutting down trees, the preparation of charcoal, the grazing of cows, the picking and selling of sea grapes, fishing in the pond and taking loads of sand for building purposes.*"⁶⁴

⁶⁰ NOE Page 58, line 27

⁶¹ NOE Page 59, line 11

⁶² NOE Page 22, line 16

⁶³ Page 22, lines 39 - 42

⁶⁴ See page 5 of Cobham *supra*

Lord Scott of Foscotte opined that the crucial question was how regularly and how openly these events had taken place. However, there was opposing evidence from Mr Cobham's witnesses, which suggested, and which the trial judge accepted, that Mr Frett's acts of possession were largely exaggerated.

Unfortunately, this Court is not privy to any opposing evidence that can challenge the acts done as claimed by Mr Dick. Further, unlike in Cobham, Mr Dick's supporting evidence did not come from his brother, who had an interest in the land and was therefore prone to bias, but rather, from an employee, Mr Kirk, who had no interest in the land or the matter.

The tenor of the Privy Council's judgment in Cobham was to analyse the lower courts' assessment of the evidence to see if it was faulty. The Lordships' conclusion did not specifically deal with whether Mr Frett's acts were, in their opinion, sufficient to amount to factual possession, but rather, whether the decision of the trial Judge— that it wasn't, should have been overturned by the Court of Appeal. They found that the trial judge was entitled to regard Mr Frett's acts of possession as insufficient based on his assessment of the witnesses' evidence. As found above, the evidence for, and in opposition to, Mr Frett's acts of adverse possession, are materially different from the instant case.

[37] Therefore, it is this Court's considered opinion that Ms Lawson's cross-examination of the Defendant and his witnesses did little to support her submission that the Defendant's possession of the Disputed lands was sporadic. All that was revealed from Mrs Dick's evidence was that her husband went abroad in 2001 and would spend about three months abroad before he came back home. Mrs Dick agreed that he did this intermittently until he returned home permanently in either 2013 or 2014.⁶⁵ Thus, there was no evidence of any sporadic occupation or any travels abroad from 1981 to 2001, which represented 20 years of continuous occupation of the Disputed lands.

Moreover, nothing from Mrs Dick's testimony suggested that her husband's cultivation of the Disputed lands occurred after 2000. Rather, at trial, Ms Lawson had questioned Mrs Dick specifically about the State Land, to which Mrs Dick stated that she was first

⁶⁵ Page 12, lines 23 - 34

aware of the encroachment in 2000.⁶⁶ Mrs Dick had stated that this State Land had already been cultivated by her husband. Thus, it appears that Ms Lawson confused the cultivation of the State Land with the Disputed lands in her submission on this issue.

It was based on this error along with the letter from Lex Caribbean, which complained of pumpkin vines growing on the Disputed lands in 2000, that Ms Lawson premised her misconceived submission that “*the Defendant’s assertion of cultivation from 1981 must be discarded as erroneous.*”⁶⁷

[38] Further, Ms Lawson’s submission that *Mr Kirk confirmed the Defendant’s sporadic occupation of his land from 2001 to 2009*, was also not at all persuasive.

She relied on the letters of the 27th March and the 2nd October, 2002 attached to Mr Dick’s witness statement, to submit that the Defendant had been notified of his encroachment onto the Disputed lands by Mr Kalloo in 1991-1995. In her opinion, by complying with the request to remove his water pipes from the Disputed lands, the Defendant had acknowledged the paper title owner from 1991-1995, thereby stopping his continued possession of the Disputed lands.⁶⁸

An examination of the contents of this letter rendered this submission baseless.

The letter of the 2nd October, 2002, stated that Mr Kalloo *held the position* of Branch Manager from 1991 – 1995 and that he, Mr Kalloo, gave evidence, at some unknown time, that the Defendant was asked by the ADBTT’s surveyor to relocate water pipes from Plot 9 and that the Defendant complied.

Thus, it was not clear to this Court whether Mr Kalloo gave this evidence while he was a Branch Manager and therefore, during the period 1991 – 1995, or whether it was given sometime after.

Secondly, and more importantly, both Mr and Mrs Dick denied, under cross-examination, that he (Mr Dick) ever complied with that request by removing any pipes from Plot 9. It

⁶⁶ NOE Page 17, line 41

⁶⁷ See para 42 of her submissions

⁶⁸ See para 49

is noted, however, that such denial was not part of either of the witnesses' evidence-in-chief.

Thirdly, having failed to bring Mr Kalloo or Mr Richard Wheeler, the author of the letter of the 2nd October, 2002, to give evidence in this matter, the contents of the letters amounted to hearsay and cannot be admitted by this Court to prove its accuracy or truth.

Based on this analysis, the Court does not accept that the Defendant acknowledged the paper title owner of Plot 9 or the Dispute lands in 1991 – 1995 as submitted by Ms Lawson.

[39] In the circumstances, the Claimants have offered no sustainable Defence to the Defendant's Counterclaim of continuous and exclusive possession of the Disputed lands between 1982 and 2001 when the Defendant left Trinidad. None of their witnesses could confirm what occurred on Plots 8 and 9 prior to 2003 and therefore, the Defendant's case of continuous and exclusive possession of the Disputed lands remained unchallenged. The Court proposes therefore to dismiss the Claimants' Claim and to award judgment for the Defendant on his Counterclaim in relation to granting a declaration that the Defendant has acquired the Disputed lands by adverse possession. Damages for trespass claimed by the Defendant have not been substantively proved and therefore the Court is not prepared to grant that relief. There is no justification at this time for granting an injunction as sought since the Court, having now made clear that the Defendant is entitled to possession of the Disputed lands, expects that parties will act responsibly and honour the order of the Court, bearing in mind that injunctions can be granted even after judgment. The Court is prepared, however, to grant the Defendant his costs of the proceedings.

Costs:

[40] The Defendant having won on all issues on both the Claim and Counterclaim is clearly regarded as the successful party and therefore entitled to his costs pursuant to **CPR Part 66.6(1)**. I can find no justification for departing from the general rule that the unsuccessful party shall pay the costs of the successful party. Both the Claim and Counterclaim are non-monetary claims and therefore each will be deemed a claim for **\$50,000.00** in

accordance with **CPR Part 67.5(2)(c)** as amended.⁶⁹ Quantification of costs in this matter is on the basis of the **prescribed scale**, which in accordance with **CPR Part 67 Appendix B**, costs will be quantified in the sum of **\$14,000.00** for both the Claim and the Counterclaim, totalling **\$28,000.00**. In applying and considering those factors set out in **CPR Part 66.6(4)(5) and (6)**, I can find no justifiable reason for reducing the quantum of costs to which the Defendant is found to be entitled.

V. Disposition:

[40] Accordingly, in light of the foregoing analyses and findings, the order of the Court is as follows:

ORDER:

- 1. The Claimants' Claim be and is hereby dismissed.**
- 2. The Defendant's Counterclaim be and is hereby granted in the following terms:**
 - i. A declaration that the Defendant has acquired title by adverse possession of the Disputed land that is to say: ALL AND SINGULAR that certain piece or parcel of land forming part of the Studley Park Estate situate in the Parish of St George in the Island of Tobago comprising approximately one acre and bounded on the North partly by Plot No. 8 and partly by Plot No. 10 on the South by lands leased from the State to Harriet Job-Dick but in the possession of the Defendant on the East by the remaining portion of Plot No. 9 and on the West by Plot No. 8 and that any title held by the Claimants thereto has been extinguished.**

⁶⁹ Amended by Legal Notice 126 of 2011

3. The Defendant's claim for damages for trespass be and is hereby dismissed.
4. The Claimants shall pay to the Defendant his costs of the Claim and Counterclaim to be quantified on the prescribed scale of costs.
5. On the basis that both the Claim and the Counterclaim are deemed claims for \$50,000.00, prescribed costs are quantified in the total sum of \$28,000.00.

Dated this 23rd day of April, 2018

Robin N. Mohammed
Judge