

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-03230

BETWEEN

**ESAU ALI
LAZINA ALI**

Claimant

AND

NARACE BOLAN

First Defendant

AND

THE REGISTRAR GENERAL

Second Defendant

Before the Honourable Mr. Justice Robin N Mohammed

Appearances:

Mr Dharmendra Punwasee instructed by Mr Raphael Ajodha for the Claimants

Mr Gerard Raphael for the First Defendant

Ms Peggy Francis-Pierre for the Second Defendant (Registrar General)

DECISION ON THE FIRST DEFENDANT'S

AMENDED NOTICE OF APPLICATION

OF THE 16TH JUNE, 2017

I. Background:

- [1] Before the Court is the First Defendant's **Amended Notice of Application filed on the 16th June, 2017 (the "Application")** seeking to have the Claimants non-suited pursuant to **Section 150** of the **Real Property Act Chap 56:02 (the "Act")**. The grounds for the Application is that the Claimants had allowed their six caveats lodged against the First Defendant's **R.P.O Application No 42 of 2010 filed on 15th January, 2010 (the "RPO Application")**, whether negligently or wilfully, to lapse. The Application was amended to include a relief that, in the alternative, the claim herein is an abuse of process.
- [2] Mr Bolan's RPO Application sought to have a parcel of land situate in Cunupia, comprising approximately ½ acre (the "said Lands"), brought under the provisions of the Act. His claim for a legal or equitable interest in the said Lands was based on his alleged exclusive and undisturbed possession of same from the year 1978. Prior to that date, he purported that his mother cultivated the said Lands solely from 1968.
- [3] The RPO application was approved by the Registrar General and a letter dated the 27th January, 2015 to that effect was sent to Mr Bolan subject to the following conditions: (i) that a notice of his RPO Application be advertised in at least two daily newspapers of general circulation; and (ii) that no caveat be lodged within three (3) months of the date of the first of such advertisements.
- [4] On the 7th March, 2015, the Claimants, Mr and Mrs Ali, lodged the first of six caveats against the RPO Application and thus, the Registrar General issued, on even date, a letter informing Mr Bolan that his RPO Application had been rejected. Thereafter, the Claimants proceeded to lodge five (5) more caveats on the 27th August, 2015, 3rd December, 2015, 31st December, 2015, 4th February, 2016 and the 11th April, 2016.
- [5] As a result, Mr Bolan, by Fixed Date Claim Form filed on the 15th April, 2016, sought to have the Claimants' caveats removed and further, to prevent them from filing any subsequent or additional caveats. He deposed, in his affidavit in support of the 15th April, 2016, that the caveats were non-compliant with **Sections 22 and 24 of the Act**, Section 24 of which required the Claimants to initiate proceedings for injunctive relief against

him within 21 days of the lodging of the caveat. The Claimants, however, did not initiate these proceedings until the 28th September, 2016, well over the prescribed time.

- [6] The Court then gave directions for the Claimants to file their response affidavit and for Mr Bolan, if necessary to file an affidavit in reply. The hearing for Mr Bolan's Fixed Date Claim was initially scheduled for the 28th September, 2016. The Claimants then entered their Appearances for the Fixed Date Claim on the 1st June, 2016.
- [7] On the said scheduled date of the hearing, Ms Lana Chunilal holding for Mr Gerard Raphael informed the Court that his clients, the Claimants, had filed a claim, on the same day, against Mr Bolan and the Registrar General, which was due for service. Accordingly, the hearing of the Fixed Date Claim was adjourned to the 26th January, 2017.
- [8] In their Statement of Case, the Claimants alleged that they had been in continuous and undisturbed possession of the said Lands since 1950 when Mrs Ali's parents first entered into possession of a larger parcel of which the said Lands form part. The Claimants thereafter entered onto the said Lands in 1960 and began cultivating same.

They pleaded that Mr Bolan lives opposite to the said Lands on the southern side and averred that his RPO Application was made without their consent or knowledge. More importantly, they allege that the Order of the Court dated the 15th February, 2015 approving Mr Bolan's RPO application subject to the conditions stated was obtained by virtue of Mr Bolan's fraudulent misrepresentations.

Thus, the Claimants sought, an injunction restraining Mr Bolan from entering or interfering with the said Lands in addition to an Order setting aside the Court Order of the 15th February, 2015.

- [9] Considering that they were allegedly in possession of the said Lands, Mr and Mrs Ali applied for an interim injunction on the 4th October, 2016 to, not only prevent Mr Bolan from interfering or entering upon the said Lands, but also to restrain the Second Defendant, the Registrar General, from bringing the said Lands under the Act pursuant to the RPO application.

- [10] When the parties met before the Court on the 1st November, 2016, notice was given that Mr Bolan intended to file another application in the matter. Thus, the First and Second Defendants gave undertakings not to (i) enter or interfere with the said Lands and/or (ii) bring the said Lands under the provisions of the Act until the hearing of the Claimants' application for injunctive relief of the 4th October, 2016 as well as the First Defendant's proposed application. Both applications were thereby fixed for the 26th January, 2017. The Court also ordered that the hearing for Mr Bolan's Fixed Date Claim filed on the 15th April, 2016 be similarly rescheduled to meet the claim herein.
- [11] Mr Bolan's proposed application, which is the Application herein, was filed on the 6th January, 2017, later amended by Application of the 16th June, 2017. As stated above, he sought to have the Claimants non-suited on the grounds that they have allowed their caveats to lapse.
- [12] At the hearing of the 26th January, 2017, the Claimants were given permission to file an affidavit in response to the Application. Thereafter, directions were given for the filing of submissions, submissions in response and reply submissions, if necessary. The Application was then adjourned to the 10th May, 2017 and the undertakings given by the Defendants on the 1st November, 2016 were to continue.
- [13] Mr Ali's affidavit in reply was filed on the 1st February, 2017. In it, he maintained that Mr Bolan does not have any interest in the said Lands. Further, he deposed that Mr Bolan had not fully complied with **Section 18 of the Act**, which required him to post a **Form B** notice accurately describing the said Lands in a conspicuous position for over 21 days. In response to the claims of their non-compliance with the Act, Mr Ali stated on behalf of the Claimants that although they did not file the Claim herein within the required 21 days of the caveat, they filed it as soon as possible after being aware of Mr Bolan's RPO Application, to which he, Mr Ali, denies he was ever served. Moreover, Mr Ali deposed that he was informed by his attorney that the Registrar General refused to accept any more caveats until these proceedings were determined.
- [14] On the 10th May, 2017, the Court ordered that the Application herein be adjourned to the 25th July, 2017.

II. Submissions:

[15] Mr Raphael filed submissions on behalf of Mr Bolan on the 4th April, 2017. He submitted that the learned judge who dealt with the RPO Application had given directions that if no caveat is lodged within three months of the date of the first advertisement, then the said Lands were to be brought under the provisions of the Act. Thus, the Claimants were out of time with the lodging of all caveats save for the one lodged on the 7th March, 2015. In any event, he maintained that the Claimants have allowed all caveats to lapse before instituting these proceedings.

In support, he contended that because the Claimants have relied on a statutory remedy to lodge the caveats preventing his client's RPO application, the statutory procedure must be strictly complied with in terms of the time limits prescribed. Mr Raphael cited several authorities from varying jurisdictions in support of this argument, the most notable of which were the ones emanating from our High Court. Reliance was also placed on **Section 150 of the Act**.

[16] Further, Mr Raphael contended that the Claimants' explanation provided at paragraph 9 of their affidavit in response to the Application herein, which states that they did not file these proceedings within the allotted 21 day time frame because they were in the process of compiling and collecting information and documents, is insufficient. In any event, he submitted that the words negligently and wilfully in the Act only apply to the failure to lodge a caveat and does not apply to allowing the caveat to lapse. Thus, it matters not whether the lapse was intentional or innocent.

In support of this contention, Mr Raphael referred to the judgment of Hamel-Smith J (as he then was) in **Lenore Walcott v John Clement Alleyne HCA No T92 of 1985**, to submit that negligence was not a requisite ingredient if one allowed a caveat to lapse. However, he contended that, if indeed negligence was a necessary element to prove the lapse, then the Claimants have failed to discharge their burden to prove that they were not negligent by particularizing the documents which they lacked that would have prevented them from instituting these proceedings on time.

In essence, Mr Raphael submitted that once a caveat lapses the Claimants are barred from proceeding with the matter.

- [17] Mr Punwasee, for the Claimants, conceded that his clients were required to strictly comply with the time limits in the Act for commencing an action. However, he contended that **Section 150(2) of the Act**, on which Mr Bolan intends to rely for the Application to have the Claimants non-suited, is inapplicable as it only concerns actions for the recovery of land and/or actions for the recovery of damages. In contrast, he submitted that the Claimants' action herein seeks (i) a declaration that they have been in possession of the said Lands since the 1950s and (ii) an order setting aside the Court Order dated the 15th February, 2015 on the grounds that it was procured by fraud. These reliefs are as a result of the fact that the Claimants have not been deprived of the said Lands and have been in possession of same at all times.

In support, reliance was placed on the authorities of **Guy v Prince HCA No 26 of 1983** and **Lenore Walcott v John Clement Alleyne** supra, which show that **Section 150(2)** does not apply to persons seeking a beneficial interest in lands by adverse possession. Further, he submitted that persons who acquire title or an interest in lands, such as Mr Bolan intends to do, take any such title or interest subject to the rights of adverse possessors. Considering that his clients have been in possession of the said lands since the 1950s and have sought declarations to that effect in this claim, Mr Punwasee contended that **Section 45 of the Act** provides that any right which Mr Bolan seeks to possess over the said Lands would be subject to the rights of his clients as adverse possessors and therefore, the Claimants cannot be barred by **Section 150(2) of the Act**.

- [18] The Second argument was that **Section 150 of the Act** only becomes applicable after lands have been registered. Counsel cited authorities from Australia to support the importance of registering the title with the Registrar prior to the operation of Section 150. Thus, as there has been no such registration or no such certificate of title issued to Mr Bolan, Section 150 is inapplicable. He challenged the authority of **Bell v Beckmann & Ward (1889) Vol X N.S.W.R Eq. 23** relied on by the First Defendant, which, on Mr Punwasee's interpretation, stated that **Section 150 of the Act** is applicable before a certificate of title has been issued, on two grounds: (i) that the authority is outdated, being

over 125 years old; and (ii) that it is derived from Australian legislation, which was drafted differently from the provision of our Act. Further, he contended that the other provisions of the Act which impose duties on the Registrar to ensure compliance with the Act prior to the registration of any instrument is consistent with the submission that deprivation of title can only take place upon the registration.

[19] Moreover, Mr Punwasee submitted that **Section 18 of the Act** empowers the Registrar General to refuse the issue of a certificate of title until it has been proved to its satisfaction, independent of any caveat or of the Court, that the requirements of notice have been complied with. Thus, it was submitted that it would be wrong for the Registrar General to bring the said Lands under the Act in the face of sworn affidavit evidence by persons attesting that the provisions of the Act have been flouted, in particular, corroborating the fact that **Section 18** has not been complied with and that two of the statutory declarations in support of Mr Bolan's RPO Application have been retracted. In these circumstances, it was submitted that the Registrar General should exercise its powers under **Section 6 of the Act** to refuse to bring the said Lands under the Act.

[20] Mr Raphael filed submissions in reply on the 14th June, 2017. In them, he challenged the submission that the Claimants could not be non-suited under **Section 150 of the Act** because the section is only applicable after the said Lands are registered by merely reiterating the argument that the provisions of the Act ought to be strictly observed.

In support, reference was made to **Section 23 of the Act** to submit that the Registrar General was entitled to proceed with the RPO Application and therefore, bring the said Lands under the Act until the caveat is withdrawn or lapsed. Thus, as the caveats have lapsed, the RPO Application should be granted and the Court has no jurisdiction as **Section 24 of the Act** has not been complied with by the Claimants. Further, he submitted that the Claimants have provided no authority to show that the Court can extend the time for the Claimants to initiate proceedings after the caveat has lapsed.

With respect to the authorities of **Guy v Prince** and **Lenore Walcott v John Clement Alleyne** *supra* submitted by the Claimants, Mr Raphael contended that both were irrelevant as they dealt with cases where a certificate of title had already been registered.

[21] Mr Raphael further contended that the Claimants had been afforded the opportunity to prevent his client, Mr Bolan, from bringing the said Lands under the Act, presumably by filing their caveats, and that once the procedure under the Act has been employed, the Claimants cannot adopt any other procedure. Thus, having satisfied the judge of the merits of the RPO Application, the Registrar General was entitled to proceed with same and bring the said Lands under the Act.

[22] It was also argued that the reliefs sought by the Claimants in their claim are analogous to those brought in **Lenore Walcott v John Clement Alleyne** *supra*, wherein the Judge had found that the action could only be construed as one for the recovery of land. He relied specifically on the dicta of Hamel-Smith J at page 36.

[23] In response to the submission that little weight be given to the authority of **Bell v Beckmann** *supra*, Mr Raphael again made a novel submission—that the older the authority, the more established and respected it is and the more reluctant a Court would be to refuse it. He also pronounced in a stand-alone sentence that our “**system**” is based on the Australian system, presumably in rebuttal to Mr Punwasee’s argument that his cited authorities were based on Australian legislation that is different to ours.

III. Law & Analysis:

[24] Mr Bolan’s Application seeks primarily to have the Claimants non-suited pursuant to **Section 150 of the Act**, on the basis that they have filed six caveats against his RPO Application and have wilfully, negligently or collusively allowed them to lapse.

[25] **Section 150 (1) of the Act** prevents any person from bringing an action for the recovery of any land, or for the recovery of any damages as a result of being deprived of the land, unless the action is commenced within 6 years of the date of deprivation:

1) *“No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land as hereinbefore described, shall lie or be sustained against the Registrar General, or against the person upon whose application such land was brought under the provisions of this Act, or against the person who applied to be registered as proprietor in respect to such land, or against the person certifying any instrument as aforesaid, unless such action shall be commenced*

within the period of six years from the date of such deprivation: Provided that any person being under the disability of infancy, or unsoundness of mind may bring such action within six years from the date on which such disability shall have ceased: Provided further, that in no case shall any such action be brought after twenty-seven years shall have elapsed from the accrual of such right of action”

Subsection 2 provides that the claimant in such an action will be non-suited if the Court determines that the he had notice of the RPO Application yet had failed to lodge any caveat or if he did so lodge, allowed it to lapse:

- 2) *“The plaintiff in any such action, or in an action for the recovery of land, shall be non-suited in any case in which the deprivation complained of may have been occasioned through the bringing of land under the provisions of this Act, if it shall be made to appear to the satisfaction of the Court before which such action shall be tried that such plaintiff, or the persons through or under whom he claims title, had notice by personal service or otherwise or was aware that application had been made to bring such land under the provisions of this Act, and **had wilfully, collusively, or negligently omitted to lodge a caveat forbidding the same, or allowed such caveat to lapse.**”*

It is clear that Mr Bolan’s Application against the Claimants is made pursuant to subsection 2 above considering that he alleges that the Claimants have allowed their caveat(s) to lapse. However, an interpretation must be made of the first sentence in this provision, which states that this Section only applies to actions for the recovery of land or the recovery of damages. It is on this material issue that Mr Raphael’s submissions seem lacking.

- [26] For one, the Claimants’ claim does not seek any relief for the recovery of land or for any damages. Rather, it seeks, inter alia, (i) an injunction restraining Mr Bolan from entering or interfering with the said Lands; and (ii) an Order setting aside the Court Order of the 15th February, 2015. Secondly, the authorities seem to suggest that in order for an action to be deemed as being one for the recovery of land, the plaintiff must be, at the time of filing, out of possession.

[27] In **Guy v Prince** *supra*, the claimant had already obtained a Certificate of Title to a parcel of land and brought the claim seeking an order of possession against the defendant. The defendant, in turn, contended that the Certificate of Title was obtained by fraud, and more importantly, that he had been in adverse possession of the land long before the Certificate was issued.

Hamel-Smith J dealt firstly with the issue of fraud before moving on to the more relevant issue of adverse possession.

In assessing the claim for adverse possession, the learned judge conducted a thorough analysis of the evidence in support of the claim and it was clear that he had had the benefit of witnessing the live evidence given by the witnesses at trial. In doing so, Hamel Smith J found that, although the claimant had already proved his title by obtaining his original Certificate of Title, he accepted the defendant's evidence that she had continued in occupation of the land adverse to the rightful owner. It therefore followed the defendant's counterclaim seeking to have the claimant's name expunged from the original Certificate of Title and her name substituted was granted.

Having found that the defendant had adverse possessor rights, he concluded that such rights were paramount to the issue of any new Certificate of Title to the claimant.

What was highly relevant was his dicta on the applicability of **Section 150(2) of the Act** to the facts of his case. He stated:

"...it was the subject of much discussion whether the defendant could pursue her claim in the light of section 150(2) of the Real Property Ordinance...

*...Section 150(2) refers to the actions in section 150(1) and to actions for recovery of land which are expressly saved in section 143. **This is not an action pursuant to section 143 in my view. The defendant is in possession and has always been in possession by virtue of the rights under her adverse possession. She has always been entitled to possession. She has never been deprived of the land as such. Her title was perfected before the issue of the Certificate of Title in favour of the plaintiff and therefore***

ranks in priority to it. Her action... is for a declaration that she is the owner of the said lands by virtue of her adverse possession. There is nothing to recover as such. Her action falls within the provision of section 49 of the Ordinance and not section 143. In my view section 150(2) has no application and the lapsing of the caveat while it may have been through negligence or otherwise...does not affect the defendant's right to pursue this action.

In essence, Hamel-Smith J's view was that, having successfully proven her claim for adverse possession, the defendant was never out of possession and therefore, her action could not be considered to be one for the recovery of land. It follows that Section 150 would not apply and the fact that she allowed her caveat to lapse neither barred her claim nor did it entitle the Registrar General to proceed with the claimant's application to have the said Lands brought under the Act.

[28] The reasoning of Hamel-Smith J, to my mind, is without flaw and is applicable to the case at bar. However, the distinguishing feature is that the learned judge had the benefit of a trial, which enabled him to make a proper determination on the defendant's counterclaim for adverse possession prior to his assessment of the applicability of **Section 150(2)**. Once it was confirmed that the defendant had been in adverse possession, it followed that, not only was her action deemed to be pursuant to **Section 49 of the Act**, which specifically deals with persons who claim title to land by possession:

"A person who claims that he has acquired title by possession of land under the provisions of this Act may apply by summons for an order vesting the land in him for an estate in fee simple or other estate claimed. The summons shall be served on every person appearing in the Register Book to have any estate or interest in the land or in any encumbrance notified on the grant or certificate of title thereto or such of them as can be found."

...but that her possessory title would be paramount to any Certificate of Title to be issued to the claimant by virtue of **Section 45 of the Act**, which states:

*“Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such mortgages, encumbrances, estates, or interests as may be notified on the leaf of the Register Book constituted by the grant or certificate of title of such land; but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title registered under the provisions of this Act, **and any rights subsisting under any adverse possession of such land**; and also, when the possession is not adverse, the rights of any tenant of such land holding under a tenancy for any term not exceeding three years, and except as regards the omission or misdescription of any right of way or other easement created in or existing upon such land, and except so far as regards any portion of land that may, by wrong description of parcels or of boundaries, be included in the grant, certificate of title, lease, or other instrument evidencing the title of such proprietor, not being a purchaser or mortgagee thereof for value, or deriving title from or through a purchaser or mortgagee thereof for value.”*

- [29] In opposition, Mr Raphael’s reliance on the case of **Walcott v Alleyne** *supra*, a decision by the same judge, Hamel-Smith J, to support his submissions for the granting of the Application was misplaced. He has clearly attempted to lift certain paragraphs out of context to suit his contentions. While it is true that Hamel-Smith J agreed that, in the absence of an explanation for allowing a caveat to lapse, negligence is to be inferred, the relevant context is contained in the preceding paragraph, which contained a summary and analysis of his earlier decision in **Guy v Prince** *supra*. Here, Hamel-Smith J stated that **Section 45**, as stated above, would not apply in the case of **Lenore Walcott** *supra*, precisely because the case for adverse possession had not succeeded. He expressly stated

“Had this plaintiff’s claim for adverse possession succeeded however, the position may have been otherwise.”

[30] What distinguishes these authorities from the case at bar, therefore, is the simple fact that the claim for adverse possession has not yet been decided between the parties. Moreover, because both parties stake their claim to the said Lands on the same ground, that each was in continuous and exclusive possession since 1968 and/or the 1950s, a determination on this issue cannot be made without a full trial. Therefore, on either authority, it must be decided whether the Claimants’ claim for adverse possession has successfully been made out before ascertaining the merit and applicability of Mr Bolan’s Application herein.

[31] In any event, this Court is not quite convinced that it can be submitted that the Claimants wilfully or negligently allowed the caveats to lapse. An examination of the events leading up to and immediately following the filing of the Claim places that submission on tenable grounds:

[32] The Claimants’ attorney, Mr Ajodha drafted a pre action letter to the Registrar General’s Department on the 4th February, 2016 indicating, inter alia, that he expected to file a claim on behalf of his clients by the 19th February, 2016. The response from the Registrar General Department is instructive. At the time of its issue on the 14th March, 2016, they noted that only one caveat had been lodged against Mr Bolan’s RPO Application, being the caveat dated the 7th March, 2015. Most importantly, the Examiner of Title, Ms Sharlene Karim, clarified that the caveat would be deemed to have lapsed after one month of being registered, said registration having occurred on the 7th March, 2016. The letter went on to state that if the claim is filed, then the RPO Application would not be processed until a ruling of the Court. It was also stated that no additional caveats need be lodged as the claim would be sufficient to halt any further proceedings.

The problem is that the claim was not filed until the 28th September, 2016, well over a month after the caveat had been registered. However, it is also undisputed that the Claimants lodged 5 more caveats thereafter, although there is nothing to suggest that these caveats have been registered.

[33] **Section 22 of the Act** requires the Claimants, who are claiming an interest in the said Lands that have been advertised, to lodge a caveat within the time frame given by any direction of a Judge. While the specific Court Order that contains this direction is not before this Court, an excerpt of that Order is given in the letter dated the 27th January, 2015 sent by Ms Sharlene Karim, Examiner of Title of the Registrar General's Department¹. The relevant excerpt of the Court Order states:

“If no caveat is lodged within 3 months of the date of the first of such advertisements, the Registrar General may bring the parcel of land under the provision of the Real Property Act.”

The first advertisement, as adduced in Mr Bolan's affidavit, occurred on the 13th February, 2015 in the Newsday newspaper and thus, the first caveat lodged on the 7th March, 2015 was within the allotted timeframe. Therefore, considering that this caveat was registered on the 7th March, 2016, it means that under **Section 24 of the Act**, this caveat lapsed on the 7th April, 2016. Thus, prima facie, the Claim filed on the 28th September, 2016 would have been out of time and the Registrar General entitled to continue with the RPO Application.

[34] What concerns this Court, however, is whether Ms Karim's letter of the 14th March, 2016, effectively amounted to an undertaking by the Registrar General that the RPO Application would be stayed regardless of when the claim is filed, provided that it is indeed filed. My interpretation of **Section 23** seems to suggest that the Registrar had such power. **Section 23 of the Act** says:

“The Registrar General, upon receipt of any such caveat within the time limited as aforesaid, shall notify the same to the applicant, and shall suspend further action in the matter, and the lands in respect of which such caveat may have been lodged shall not be brought under the provisions of this Act until such caveat shall have been withdrawn, or shall have lapsed from any of the causes hereinafter provided, or until a decision

¹ Attached as C to Mr Bolan's Affidavit in Support

shall have been obtained from the Court or Judge having jurisdiction in the matter.”

[35] The wording of the provision is clear. It states that the RPO Application will be suspended upon the lodging of a caveat on time until either (i) the caveat is withdrawn; (ii) the caveat has lapsed; or (iii) there is a Court decision. Mr Ajodha’s pre-action letter gave notice to the Registrar that a claim would be filed and thus, a Court decision pending. The response by Ms Karim indicated that once the claim is filed the RPO Application would be suspended until the claim is decided by the Court. Although I concede that Ms Karim was lead to believe that the claim would be filed sooner, it is my interpretation that the Registrar had exercised its authority under **Section 23** to stay the RPO Application until the claim is decided, whether or not the caveat would have lapsed in the interim.

[36] Such an interpretation accords with common sense, fairness and most importantly, with the law. As explained above, the Claim herein is paramount to Mr Bolan’s Application for there is a material fact in dispute, i.e. who is and has been in possession of the said Lands, which must be first resolved. Until such resolution, the Court cannot determine whether (i) the Claimants’ claim is one for recovery of land or rather, for a vesting order; and consequently, (ii) whether the First Defendant’s Application to have the Claimants non-suited is proper.

IV. Disposition:

[37] **Accordingly, in light of the foregoing analyses, the order of the Court is as follows:**

ORDER:

- 1. That the First Defendant’s Amended Application filed on the 16th June, 2017 be and is hereby adjourned pending the outcome of the Claimants’ Claim herein.**

- 2. That the First Defendant is to file and serve his Defence to the Claimants' Claim filed on the 28th September, 2016 on or before the 23rd March, 2018.**
- 3. That the costs of the First Defendant's Application be and are hereby reserved.**

Dated this 20th day of February, 2018

Robin N. Mohammed
Judge