REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-01734

BETWEEN

DEOCHAN SAMPATH

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

FIRST DEFENDANT

TRINIDAD AND TOBAGO HOUSING DEVELOPMENT CORPORATION

SECOND DEFENDANT

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. V. Maharaj instructed by Mr. A. Seecharan for the Claimant

Mr. D. Punwasee and Ms. C. Nixon instructed by Ms. S. Ramoutar for the Defendant

Judgment

1. This claim has been settled against the Second Defendant who has conceded liability for trespass. The sole remaining issue is that of whether the title of the First Defendant has been extinguished by way of the adverse possession of the Claimant of a parcel of land situate at No. 56 Smith Drive, Mausica, in the ward of Arima, comprising of approximately twenty five (25) acres ("the lands").

The Claim

2. The Claimant has quite helpfully set out the facts in submissions and the court repeats the material parts for the purpose of its introduction in this judgment. They are as follows.

3. On the 25th February 1950 the Governor as the Intendant of State Lands His Excellency John Wister Shaw granted a Standard Agricultural Lease of a parcel of land comprising of Seventy-Three Acres Two Roods and Thirty-Two Perches situated on the Mausica Road in the Ward of Arima to Mr. Edward Barton Smith for a term of twenty-five years (the "original lease"). Mr. Smith was well known for his cultivation of pineapples and so was referred to as "Pineapple Smith". The lease expired on the 24th February 1975 and the State did not seek to enforce its right to possession of the lands. On the 31st January 1980 or some five years after the expiration of the term of the lease, Mr. Smith purported to assign all his leasehold interest and hereditaments in the said property to three persons namely Lutchminarine Maharaj, Samuel Bharath and Leonard Williams.

4. This purported assignment (as admitted by the Claimant) was in violation of an expressed term of the original lease contained in Clause 2(11) thereof. There is no evidence that the State ever exercised its right of re-entry either for violation of the terms of the lease or upon the effluxion of the term of years.

5. The said Clause 2(11) which is a covenant to be performed by the Lessee reads as follows;

> *"2 (11). Not to assign or sublet or part with the possession of the demised premises or any part thereof and/or construct any building thereon without the previous consent in writing of the lessor first had and obtained."*

6. Of the three persons named as assignees there is evidence that Lutchminarine Maharaj and later his son Vinda Maharaj entered into possession of a part of the lands. However, there is no evidence that Baharath or Williams ever entered into possession of the parcel of land that was purportedly assigned to them.

7. A report dated the 30th April 1990 under the hand of Mr. Hugh Aberdeen AA 11 Ministry of Agriculture shows that the parcels of land that were purportedly transferred to Baharath and Williams were "taken over" by one Mr. Khemraj Kannick. The report is silent as to whom Kannick displaced from the land.

8. By a letter dated the 9th August, 2007 the Ministry of Agriculture acknowledged that the Claimant had been farming at the same address for the past sixteen years since 1991, or twenty-one years prior to the filing of this Claim.

9. The Claimant claims that he has been in open, continuous and undisturbed occupation of the lands for a period sufficient to satisfy the requirement of the Crown Suits Limitation Ordinance Chap 5 No. 2 so as to extinguish the title of the First Defendant having been put into possession by Mr. Kannick. The Claimant claims that he has done this by the cultivation of the lands with several crops and the building of a three bedroom home in which he and his family resides. The Claimant therefore claimed, inter alia, a declaration that the title of the First Defendant is extinguished by virtue of the Crown Suits Limitation Ordinance.

10. On the 25th April 2011, persons acting on behalf of the Second Defendant entered the lands occupied by the Claimant and destroyed his crops and sought to evict him. As a consequence, he filed this claim which included an application for injunctive relief. The application for an injunction against the First Defendant was dismissed and an undertaking was given by the Second Defendant to continue until the determination of the application for the injunction. The injunction was eventually granted against the Second Defendant until determination of the claim. The Claimant remains in occupation of the lands pending the determination of this claim.

11. Having regard to the issues raised by both parties (the submissions of the Defendant are set out later in this judgment), the issues that arise for determination by this Court are as follows:

    a. Whether the Claim should be struck out or stayed;
    b. Whether the title of the State has been extinguished.

Evidence for the Claimant

12. The Claimant was the only person to give evidence on his case. The relevant parts of his evidence is in large measure set out above. Additionally, he testified that he was born on the 14th June, 1974, his wife was born on the 11th November, 1972, and his children Joshua Sampath, Johanna Sampath and Josiah Sampath were born on the 29th December, 1996, 25th July, 2010 and 5th May, 2013 respectively.

13. The lands form part of a larger parcel of land comprising of Seventy-Three (73) acres, two roods and thirty-two perches ("the Pineapple estate"). Although the term of years expired on the 30th April, 1974 without renewal, Mr. Smith continued to cultivate pineapples on the lands until his death. After the death of Mr. Smith in or about the year 1979, Mr. Khemraj Kannick went into occupation of approximately **two thirds**

of the lands. The remaining one third was occupied by Mr. Lutchminarine Marajh and is now occupied by his son Mr. Vinda Marajh.

14. It is the evidence of the Claimant that Mr. Kannick later divided his **two thirds** into two parcels. The Claimant occupied one of those parcels and the other was later occupied by Mr. Leonard Williams. The one third of the lands occupied by Mr. Williams was further subdivided and occupied by Mr. Kannick's son, Jeason Kannick and Mr. Arjoon Deyalsingh until they were evicted by the Second Defendant.

15. It is the testimony of the Claimant that he was put into occupation of the lands which he occupied by Mr. Kannick, now deceased, who was the common-law husband of the Claimant's sister. The Claimant was informed by Mr. Kannick that prior to his transfer of the land to the Claimant, he Kannick was in undisturbed possession since 1979. The Claimant further testified that Mr. Kannick pointed out the boundaries of the lands to him in 1986. According to the Claimant, he planted over four hundred coconut and citrus trees along the perimeter line of the lands to demarcate the boundary.

16. It is the evidence of the Claimant that since being put into occupation, he has remained in open, continuous, undisturbed possession of the same in excess of twenty-three (23) years. During this period he has planted various short term agricultural crops such as sweet potatoes, topi tambo, cassava, water melon, caraille, bodi and pawpaw. The Claimant further testified with the possession of Mr. Kannick tacked on, he has been in possession of the lands for over thirty-three (33) years.

17. According to the evidence of the Claimant, upon entering into occupation, he constructed a wooden structure thereupon. This structure was used to discharge several functions associated with the use and occupation of the lands as a farm. The structure functioned as a resting place for the Claimant and his employees as well as for the storage of both equipment and produce after harvesting. He further testified that he did not reside at the lands initially but rather at his house built at No. 17

Petersville Street, Chin Chin Road, Cunupia. After marrying on the 7th May, 1996, his wife would accompany him to the lands during cultivation and harvesting.

18. Shortly after his marriage, he began constructing a modest structure on the lands so as to afford his wife and him some privacy from the workers. This structure was expanded as his family grew and eventually he constructed a three bedroom house on the lands. The Claimant testified that he continued to maintain two residences up to 2006. In 2006 the Claimant's brother, Mr. Gangerpersad Sampath had some difficulties and the Claimant allowed him and his family to occupy the house in Cunupia.

19. According to the evidence of the Claimant, in 2006 he eventually sold his house in Cunupia and all of his three children were born while he lived on the lands.

20. It is his evidence that he developed the lands and constructed a concrete building which was clearly visible to anyone who passed by. The Claimant testified that agents or servants of the State visited the lands on several occasions and advised him on Farming practices. Therefore, according to the evidence of the Claimant the State encouraged and acquiesced his development of the lands.

21. Further, the Claimant testified that by letter dated the 9th August, 2007, the Ministry of Agriculture recognized his occupation for sixteen years.

Cross-examination of the Claimant

22. The Claimant testified that he did not approach any of his neighbours or his employees to give evidence on his behalf. That he asked his attorney if he needed witnesses and was duly advised. The Claimant further testified that he is aware that there is currently another action against the Housing Development Corporation ("HDC") in which the Claimants in that action are claiming that HDC unlawfully

entered the Pineapple estate and destroyed crops belonging to them. He is also aware that the Claimants in that claim are claiming that they occupy the entire Pineapple estate. He testified that his knowledge of that action did not impact on his decision not to ask his neighbours to give evidence on his behalf in this present matter.

23. The Claimant admitted in cross-examination that he was put into occupation in 1986 but only began full cultivation in 1991.

24. He testified that when he visited the office of the Ministry of Agriculture to obtain the letter dated the 9th August, 2007, he did not have to tell the officers who he was and where he was planting as they knew him well and knew the length of time he had been in occupation. The Claimant accepted in cross-examination that if in 2007 he was in occupation for sixteen years that logically meant that his occupation began in 1991. However, he added that the letter of the 9th August 2007 pertained to the cultivation of the lands, he having gone into full cultivation in 1991, but having occupied from 1986.

25. It is the evidence of the Claimant that the officers from the Ministry of Agriculture are supposed to visit the lands once or twice per year. Sometimes they would visit unannounced. He testified that he has never tried to block the access of the officers to the lands. He further testified in cross-examination that the officers never communicated to him that the State required him to use the lands for agricultural purposes.

26. According to the evidence of the Claimant, he possesses financial records as well as photographs of his cultivation on the lands but was unaware that he had to disclose those documents. He also testified that he could not recall when he built the wooden structure on the lands.

The Defence

27. It is the case for the First Defendant that this action ought to be stayed or struck out as there is a pending matter in the High Court relating to the said lands. This claim is entitled CV2011-01556 ***Rameshwar Marajh, Jeason Kehraj Kannick Jr. v Trinidad and Tobago Housing Development Corporation***. The very lands which the present Claimant allegedly occupies forms part of the lands which are the subject matter of the 2011 claim. The Defendant submits that as a consequence, a court ought not to hear this claim as a finding on the first claim would be binding in law on this claim.

28. The First Defendant alleges that on the expiration of the original Lease, Mr. Smith held over and continued to pay rent in the manner prescribed in the lease until his death. Mr. Smith therefore continued to be a tenant of the State in relation to the Pineapple estate.

29. According to the First Defendant, by an agreement dated the 31st January, 1980, Mr. Smith purported to assign his tenancy in the Pineapple Estate to Mr. Lutchminarine Marajh, Mr. Samuel Bharath and Mr. Leonard William, **subject to the consent of the State**. Mr. Williams sold his interest in the northern one third portion of the Pineapple Estate to Mr. Kannick. Mr. Kannick forcibly removed Mr. Bharath and proceeded to occupy the third portion held by Mr. Bharath.

30. Thus, the First Defendant alleges that by virtue of the following, the interest of the State in the lands has not been extinguished:
    a) Mr. Smith and thereafter, Mr. Marajh, Mr. Bharath and Mr. Williams at all times acknowledged the State's title in the Pineapple Estate and their occupation of the same was not adverse to the title of the State;
    b) The Claimant is not entitled to add the occupation of Mr. Smith, Mr. Marajh, and/or Mr. Bharath and/or Mr. Williams to his own;
    c) The Claimant acknowledged the State's title in the lands by requesting the State to regularize his occupation thereof and/or grant him permission to occupy it for agricultural purpose;

d) At all material times the State exercised acts of control and monitoring over the lands and rendered assistance to the Claimant in his use of the lands for agricultural purposes. The Claimant thereby had the State's consent or implied permission to occupy and use the lands.

e) The Claimant did not have the requisite animus possidendi to extinguish the State's title in the lands.

Evidence of the First Defendant

31. The First Defendant called two witnesses, namely, Mr. Ian Fletcher and Mr. Naim Rasool.

32. **Mr. Ian Fletcher** testified that he is the Acting Commissioner of State Lands. His duties include being the State's landlord for all State lands. He deals with consents, declarations, transfers, issuing of leases, licenses, eviction notices for squatters, acquisitions, as well as advisory and termination notices to tenants in breach.

33. According to the evidence of Mr. Fletcher, he first became aware of the Pineapple estate in 1984. At that time he was an Agricultural Officer I for the County of St. George. Mr. Fletcher testified that as far as he was aware the Pineapple estate was at that time being cultivated with pineapples by Mr. Smith. He did not know of the Claimant at that time.

34. It is his evidence that in or about the year 2008, he came across a file in which he discovered that Mr. Jeason Kannick, Mr. Lutchminarine Marajh and the Claimant were applying for regularization of the Pineapple estate. In or about the year 2008, he was promoted to the post of Agricultural Officer II. He testified that regularization is the process of conferring title to persons who occupy state lands without a tenancy, after investigations. The Claimant's application to be regularized is dated the 11th October, 2005. Mr. Fletcher further testified that he did not know when the Claimant first went into occupation but he has seen his application for regularization.

35. According to the evidence, sometime later, the Land Administration Division was advised that HDC had expressed an interest in having the Pineapple estate reserved for housing and consequently wanted the farmers to vacate same. Since, that time, the Land Administration Division has been working with the three farmers currently occupying the Pineapple estate, namely, Mr. Jeason Kannick, Mr. Lutchminarine Marajh and the Claimant to find alternative sites for them to farm on.

36. Mr. Fletcher testified that he was present at a meeting to discuss alternative sites for the farmers. The meeting was co-chaired by the then Minister of Food Production, Mr. Devant Maharaj and the then Minister of Land and Marine Resources, Mr. Jairam Seemungal. Mr. Fletcher further testified that the three farmers mentioned above were also present, along with the Chief Executive Officer of HDC, Ms. Jearlene John. Minister Maharaj suggested a nearby site which the farmers were "happy about" and the Minister of Land and Marine Resources is in the process of determining the land's availability.

37. It is the evidence of Mr. Fletcher that he has had sight of the original lease. Mr. Fletcher testified that the ground rent of $147.40 per year was paid in 2004, 2006, 2007, 2008, 2009 and 2010. That the payment of the rent meant that despite the determination of the tenancy, the District Revenue Office continued to accept rent and thereby created a hold over the interest in the Pineapple estate. Mr. Fletcher is unsure as to the identity of the person(s) who paid the rent. He also had no knowledge of the agreement dated the 31st January, 1980 in which Mr. Smith purported to transfer his interest in the Pineapple estate to Mr. Williams, Mr. Bharath and Mr. Marajh.

38. According to the evidence of Mr. Fletcher, he is aware of the existence of a State Agricultural Land Information System report ("the SALIS report") dated the 27th November, 2000, which was prepared in relation to the Pineapple Estate.

39. Mr. Fletcher testified that the Claimant was successful in obtaining a ten-acre parcel of land at Edinburgh 1, Chaguanas. This ten-acre parcel of land was advertised by the State for agricultural purposes along with other parcels of land. The Claimant applied to farm on the same and was successful in his application.

Cross-Examination of Mr. Fletcher

40. Mr. Fletcher testified that he assumed the position of Acting Commissioner on the 2nd February, 2014. He further testified that he could not say whether any eviction notices were issued to the Claimant by him or whether the prior Commissioner of State Lands issued any eviction notices to the Claimant.

41. Mr. Fletcher initially agreed that the information in his witness statement was derived from the records of the Commissioner of State Lands only. When asked about information in those records, Mr. Fletcher sought to retract the former statement and testified that he prepared his witness statement from his knowledge of the records and his knowledge of the matter in its entirety. That some of the information from the records were utilized.

42. According to the evidence of Mr. Fletcher, in 1984 he visited the Pineapple estate as an officer of the Ministry of Agriculture. He was never directly involved with the farmers at that time as he was in a different division. Mr. Fletcher was an Agricultural Officer I for the County of St. George for two years after which he moved to another County. In or about the year 2000, he returned to the County of St. George, but he was in a different department in the Ministry, therefore he had no knowledge of the cultivation of the Pineapple estate. Mr. Fletcher could not say whether he visited the Pineapple estate between the periods 2000 to 2006.

43. Mr. Fletcher testified that from 2005 to 2012, the Ministry of Agriculture was in the process of regularizing the Claimant's occupation of the lands.

44. He could not recall the date when the HDC expressed its interest in having the Pineapple Estate reserved for housing. This interest was expressed before he became the Commissioner, however, he had knowledge of this interest prior to becoming the Commissioner. According to his evidence, the above mentioned meeting took place after the Claimant filed this claim in April, 2012. Mr. Fletcher attended this meeting in the capacity of an Agricultural Officer II. He testified that HDC called for a meeting with the two Ministries and he was invited to the meeting. According to Mr. Fletcher, in this meeting, the Claimant was treated as an occupant of State Lands. He testified that he could not say whether the Claimant was a permitted occupant at that time.

45. The witness admitted that after the lease expired in 1974, the State did not resume possession of the Pineapple estate. He could not recall whether the State took any steps to resume possession of the Pineapple estate. Moreover, he could not recall whether the State took any steps to recover any part of the Pineapple estate based on the SALIS report dated the 27th November, 2000 which was forwarded to the Commissioner's Office for information purposes.

46. The witness could not recall whether there was a house constructed on the Pineapple estate in 1984. In or around 2012, he remembered visiting the Pineapple estate and seeing more than one house at that time. He agreed that in accordance with the original lease only one structure was allowed to be built on the Pineapple estate. That the construction of more than one structure on the Pineapple estate would have been a violation of the original lease and rendered the lease liable to forfeiture. He further agreed that without permission, sub-division of the Pineapple estate was also a violation of the original lease and rendered the lease liable to forfeiture.

47. It is his testimony that the letter dated the 30th April, 1990 (document 4 of the First Defendant's list of documents) did not indicate that the Intendant or Sub-intendant of State Lands was entertaining the request to issue three leases for the Pineapple estate.

That the information contained in this letter, that the occupants of the Pineapple estate were awaiting the finalization of their transfer documents appeared to be only the view of the Agriculture officers assigned to that County. This letter would have been sent to the Intendant or Sub-intendant's office for further verification. Mr. Fletcher further testified that the Intendant or Sub- intendant of State Lands would have been aware that the Pineapple estate which was initially owned by Mr. Smith was now occupied by Mr. Kannick and Mr. Marajh. Further, that this information would have also been within the knowledge of the Ministry of Agriculture.

48. Finally, he agreed that in the year 2010, the Offices of the Commissioner would have known that Mr. Smith was deceased and the occupants of the Pineapple estate were not the beneficiaries of the estate of Mr. Smith.

49. **Mr. Naim Rasool** testified that he is an Agricultural Assistant I in the St. George West County Office. From 1999 to 2001, he was attached to the State Lands Department as a contract land officer, in the County of St. George. Mr. Rasool has been an Agricultural Assistant since 2001, and his duties include educating farmers on proper farming techniques, doing administrative work like processing agricultural incentives, processing farmer's registrations and assessing flood damages.

50. It is the evidence of Mr. Rasool that in the course of his duties as an Agricultural Assistant I, he had cause to visit and inspect the Pineapple estate and also had dealings with the Farmers who he encountered thereupon. Mr. Rasool prepared the SALIS report dated the 27th November, 2000 which showed the level of cultivation on the Pineapple estate and the persons in occupation. This report is usually done every year.

51. That the SALIS report revealed amongst other things, that the Pineapple estate was previously owned by Mr. Smith and that Mr. Williams, Mr. Bharath and Mr. Marajh had joined together to purchase the rights to Pineapple estate. The SALIS report noted that the Pineapple estate had been equally divided into three parts. Moreover, the

SALIS report also detailed that Mr. Bharath claimed that he was forced off his portion of the Pineapple estate by Mr. Kannick. Mr. Kannick in turn sublet his portion to Mr. Arjoon Deyalsingh, Mr. Arnold Maraj, Mr. Parasram Sankar, an unknown person and Mr. Kannick's brother-in-law, the Claimant.

52. According to the evidence of Mr. Rasool, the SALIS report also revealed whether there were any houses and/or concrete structures on the Pineapple estate. Mr. Rasool testified that he did not observe any such structure at that time on the Pineapple estate.

53. It is the evidence of Mr. Rasool that at the end of the SALIS report, he made the following recommendations:

    a) That a lease of ten hectares should be given to Mr. Rameshwar Marajh;
    b) That the remaining land should be sub-divided into 9.20 hectare plots and 1.6 hectare plots and that five small Farmers should each be given a plot and be regularized;
    c) That Mr. Bharath should also be considered for a plot since he is actively involved in agriculture;
    d) That the remaining four plots should be advertised for distribution.

54. By memorandum dated the 30th January, 2001, Mr. Rasool made further observations concerning the Pineapple Estate. He observed that Mr. Kannick bought twenty-five acres of the Pineapple estate from Mr. Leonard Williams. Mr. Rasool testified that he does not have any evidence as to when Mr. Kannick bought the land from Mr. Williams.

55. Mr. Rasool made further recommendations in the abovementioned memorandum as follows:

a) That Mr. Rameshwar Maraj should be given a Standard Agricultural Lease for approximately 9.8 hectares;
b) That the rights/interest of Mr. Samuel Bharath should be considered;
c) That the portion of land that Mr. Kannick obtained from Mr. Williams should be considered for leasing to its present occupiers.

56. Mr. Rasool testified that as far as he knows, Mr. Rameshwar Maraj continues to occupy twenty-five acres of the Pineapple estate. He further testified that he was only aware of the Claimant's farming on the Pineapple estate from the year 2000.

The cross-examination of Mr. Naim Rasool

57. Mr. Rasool testified that he is now posted at the St. George East, County Office. In preparation of his witness statement, Mr. Rasool relied on his memory and a file of documents which were in the possession of the attorney.

58. According to the evidence of Mr. Rasool, in the SALIS report, he would have mentioned that there was one house built on the Pineapple estate which was occupied by Mr. Marajh. That apart from that house there were no other houses on the lands. He was not aware that there was a house built by Mr. Smith on the Pineapple estate. He further testified that on a subsequent visit to Pineapple estate, he observed a two storey, board structure which was not the house that was built by Mr. Marajh. Mr. Rasool did not file a report pertaining to this observation since it was not his responsibility to do a report on the Pineapple estate that day.

59. He also testified that during interviews with persons occupying the Pineapple estate, he was told that the Claimant was also in occupation of the Pineapple estate. He further testified that he never ascertained from those persons the date when the Claimant actually went into occupation.

60. According to the evidence of Mr. Rasool, he did not speak to Mr. Kannick or the Claimant because he could not locate them. He was told that Mr. Kannick lived in Enterprise. Mr. Rasool visited a tailoring shop, Kannick's Tailoring in Enterprise and made some enquiries but was not able to speak to Mr. Kannick. Mr. Rasool further testified that he did leave a message with Mr. Kannick's tenants indicating that he wished to speak to Mr. Kannick.

The first issue

Whether the Claim should be struck out or stayed

The submissions of the First Defendant

61. Counsel for the First Defendant submitted that the Claimant admitted to knowing since Easter Monday of 2011 that Mr. Jeason Khemraj Kannick Jr. and Mr. Rameshwar Marajh had commenced an action against HDC. That their interest in the outcome of this case at bar would therefore have been obvious to the Claimant, as would the potential prejudice to them if this case is determined in his favour. Therefore, it is the contention of the First Defendant that the Claimant ought to have joined Jeason Mr. Khemraj Kannick Jr. and Mr. Rameshwar Marajh to this action or applied to have the two actions consolidated. The First Defendant submitted that failure to so do has resulted in the real possibility of irreconcilable judgments and manifest injustice to Mr. Jeason Khemraj Kannick Jr. and Mr. Rameshwar Marajh since they have not had an opportunity to participate in these proceeding.

62. As such, the First Defendant submitted that this case ought to be stayed and an order be made that the pleadings be served on Mr. Jeason Khemraj Kannick Jr. and Mr. Rameshwar Marajh so as to allow them an opportunity to participate in these proceedings. Alternatively, the First Defendant submitted that this Court should refuse the declaratory relief sought by the Claimant.

63. Counsel for the First Defendant relied on the case of ***Derrick v Najjar and the Attorney General of Trinidad and Tobago 1976 28 WIR 340,*** in which it was held that a determination can only be properly litigated in proceedings to which the affected person is made a party. A person's rights cannot be affected without having been given an opportunity to be heard.

64. Further, Counsel for the First Defendant relied ***on Zamir and Woolf, the Declaratory Judgment,*** Third edition at paragraph 6.01, page 262, where the following learning is set out:

"The general rule is that it is desirable that all persons who appear to have a real interest in objecting to the grant of a declaration claimed in legal proceedings should be made defendants. As Viscount Magham said: "the persons really interested were not before the Court. It is true that in the absence they were not strictly bound by the declaration, but the courts have always recognized that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made: London Passenger Transport Board v Moscorp [1842] A.C. 332 at 345"

65. The Claimant made no submissions on this issue.

Findings

66. The court is unable to agree with the submission of the First Defendant. It is the Claimant's case that he was put into occupation of the parcel which forms the subject of these proceedings by Mr. Kannick (senior). To that extent, the case for the Claimant is not adverse to or inconsistent with the other claim brought by Mr. Kannick (Junior). Further, there is no dispute in this case on the evidence that the

Claimant has been in occupation of the parcel of land since at the least 1991. So that it was wholly unnecessary in the court's view to have joined of Mr. Jeason Khemraj Kannick Jr. Further, in relation to Mr. Rameshwar Marajh, the facts and issues to be decided in this case do not directly touch and concern Mr. Marajh as far as the possession of this Claimant is concerned.

67. Additionally, the court is of the view that it ought not to accede to the request of the First Defendant for the reasons that the First Defendant had ample opportunity to have the very point heard as a preliminary point much earlier on at the Case Management stage and chose nonetheless not to so do.

68. Further, an entire trial has taken place and facts have been canvassed by way of evidence. It would be a waste of judicial time and resources therefore to accede to this request at this stage of proceedings. Such a move would be unfair to the Claimant having regard to the passage of time.

69. It must also be noted that this court has yet to be informed of the outcome of that claim.

The Second Issue

Whether the title of the State has been extinguished

Sub-issues:

i. What is the applicable law;
ii. Whether the Claimant can attach Mr. Kannick's possession of the lands to his possession;
iii. Whether the Claimant has satisfied the requisite elements of adverse possession.

Sub- issue one: *The applicable law*

Law

Sections 2 and 3 of the Crown Suits Limitation Ordinance Chapter 5 No 2 (renamed the State Suits Limitation Act and amended by the Law Reform (Property) Act No. 51 of 1976) provide as follows:

> *"2. The Crown shall not at any time sue, impeach, question, or implead any person for, or in anywise concerning, any lands, tenements, rents, or hereditaments whatsoever, which such person or his ancestors or predecessors, to those from, by, or under whom he claims, have or shall have held or enjoyed or taken the rents, revenues, issues, or profits thereof by the space of thirty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, or other suit or proceeding as shall at any time be filed, issued, or commenced for recovering the same or in respect thereof.*
>
> *Provided that nothing hereinbefore contained shall be construed to prevent the Crown, or any person claiming through the Crown by subsequent grant, from showing (in any information of intrusion, or action for possession or to establish title) title in the Crown or in the grantee under such grant by reason of the cesser, expiration, or determination, within sixteen years before the filing of such information or commencement of such action, of the interest of any grantee under a previous grant by virtue of which any person has been in possession for thirty years or more, but the estate or interest under which has within such sixteen years ceased, expired, or been determined."*

> *"3. In any information of intrusion on behalf of the Crown or other proceeding by or on behalf of the Attorney General or other public officer, to recover possession or establish title to lands on behalf of the Crown, and in any action of ejectment or to establish title or for damages for or an injunction to restrain trespass to realty in which the plaintiff claims under a grant from the Crown within sixteen years before action, it shall be competent for the defendant, upon serving notice of such defence to the opposite party seven days before trial to give in evidence exclusive possession by him and his predecessors in title for sixteen years immediately before the commencement of such*

action, If it is found that such possession is proved in fact, then the Crown or the person claiming through or under the Crown shall not be entitled to judgment except on proof of title within and subject to the limitation contained in the last preceding section."

The submissions of the Claimant

70. Counsel for the Claimant submitted that a person in longer use of State land can only be disposed by the State proving its title. The Claimant contended that the First Defendant has failed to prove that they have a better title than the Claimant to the lands. Counsel relied on the case of ***Attorney General v Parsons (1836) 150 ER 652 page 653*** in which Lord Abinger C. B. stated: *"It means only that the onus is thrown on the Crown to prove its title in the first instance. The defendant shall not be bound to plead his title especially where he has had twenty year's possession without disturbance; in that case the crown stands in the situation of a subject."*

71. Counsel for the Claimant further relied on the case of ***Attorney General v Stollmeyer and the New Trinidad Lake Asphalt delivered on the 2nd May, 1904***. Stollmeyer supra was an action for entry upon a parcel of land at La Brea. The Defendants stated that the land as to which entry was admitted was not the property of the Crown. Northcote CJ set out at page 144 the following:

"The positions of the parties appears to be this, Lot 6 had been decreed from the Crown in 1854- more than 40 years before the commencement of this action- and it has not shown that it was forfeited to and became vested in the Crown in 1876, or at any other time. Unless the Crown can show title, within the period limited by law, the defendants are entitled to lot 6 against the world. Possession, according to the facts proved, will avail against the Crown. The Crown having parted with its title cannot call for the defendants' title unless it can be shown that the title had revested again in the Crown. In the circumstances it is sufficient for the defendants to prove possession."

72. The Court notes that ***Stollmeyer*** was a case in which the State was in fact the party that initiated action to recover title to certain lands. Further, in that case the Defendants held the lands by a deed of conveyance dated the 12th November, 1891.

73. So that the court understands the Claimant to be submitting that because the Claimant has been in possession for more than sixteen years immediately preceding the claim (if the court so finds), the burden lies on the Defendant to prove a better title within the thirty-year period which they have failed to do.

The submissions of the Defendant

74. Counsel for the First Defendant submitted that Section 3 of the Crown Suits Limitation Ordinance is of no applicability where the State is defending an action brought by a person in possession, such as the case at bar. That the very clear and precise language of the commencement of section 3 leaves no doubt that its applicability is limited to instances where the State has commenced proceeding against an occupier for the recovery of land. In such a case, the person in possession, upon giving proper notice, provides evidence of his possession for 16 years immediately preceding the commencement of the State's action, the State must then prove its title.

75. In exploring the history and context of the Crown Suites Act, the First Defendant submitted that the Crown Suits Limitation Ordinance was modeled after the English Crown Suits Act 1769 (9 Geo. 3, c. 16) ("the English Act"). The purpose of the English Act was to allow for time to run against the State in respect of lands and to bar the State's right and extinguish its title at the end of the limitation period: See ***The Time Limit on Actions Being a Treatise on the Statute of Limitations and The Equitable Doctrine of Laches, John M. Lightwood. M.A. 1909 at page 152.***

76. Counsel for the First Defendant relied on the case of ***Walker v Smith (1907) 7 SR (NSW) 400***, in which it was held that possessory title can be obtained after the expiry

of the limitation period. Simpson CJ at page 403 stated that "…..the Nullum Tempus Act bars not only the Crown's right to recover the land but also its title thereto."

77. According to Counsel for the First Defendant, the first clause of Section 1 of the English Act employs similar wording to the First Clause of Section 2 of the Crown Suits Limitation Ordinance. Therefore, the First Defendant submitted that they have similar effect, namely, to bar the State's right to bring an action to recover possession of the lands after the expiry of the limitation period.

78. It is the submission of the First Defendant that the second clause of Section 1 of the English Act, which extinguishes the title of the State and transfers it to the subject was not reproduced in the Crown Suits Limitation Ordinance. That in effect the second clause of the English Act Corresponds to Section 22 of the Real Property Limitation Act Chap. 56:03, which extinguishes the title of individuals and not the State, at the expiry of the limitation period.

79. Therefore, it is the contention of the First Defendant that as the second clause of Section 1 of the English Act was omitted from the Crown Suits Limitation Ordinance, the title of the State is not automatically extinguished after the expiry of the limitation period, and the Crown Suits Limitation Ordinance only prevents the State from commencing an action for the recovery of lands at the expiry of the limitation period.

80. The court understands the First Defendant's argument to be that the State is not required to prove title and it the Claimant who must prove his possession for thirty years.

Findings

81. The court finds that the submissions of the Defendant appears to hold much weight and is very persuasive. Section 3 of the Crown Suits Ordinance, clearly provides that

where the state or any person on its behalf sought to recover possession or establish title to lands on behalf of the State, a Defendant upon proving exclusive possession by him and his predecessors in title for sixteen years immediately before the commencement of such action will place a burden of proof onto the State to prove its title to the land. Therefore, in the courts view, section 3 only applies to cases in which the State has commenced action against an individual to recover its title to lands and as such the Court agrees with the submissions of the First Defendant.

82. To consider the position from another angle, should the Court agree with the submissions of the Claimant, it would follow as a matter of legal consequence that any person who brings suit on the basis that he had been in occupation of state land would in fact only have to demonstrate on the evidence that he has been in possession for sixteen years immediately preceding the suit and the burden would then be placed on the state to prove their title. This clearly could not have been the intention of Parliament.

83. In the Privy Council Case of ***Gayadeen and another v The Attorney General [2014] UKPC 16***, the appellants were occupiers of a car park within the bounds of lands acquired by the State for the construction of a highway. The appellants claimed that they had acquired a possessory title pursuant to the operation of the Crown Suits Limitation Ordinance. The State claimed that all the land acquired in 1945 was dedicated as a public highway and that the appellants did not acquire possessory rights which could have overridden the right of highway. The Board having found that there was no public right of way over the disputed lands, set aside the orders of the High Court and the Court of Appeal and declared that the appellants had title to the disputed lands having proved on the evidence that they were in occupation of the same for the statutory period of thirty years pursuant to Section 2 of the Crown Suits Limitation Ordinance and also had the necessary *animus possidendi* to possess the lands. There is no need to set out the dicta in the court's view.

84. The case of ***Gayadeen*** has been of much assistance to this court as the facts thereof are similar in principle to the relevant facts of the case at bar. The dicta of Their Lordships in ***Guyadeen*** demonstrates in this court's view that the burden lies on he who brings suit pursuant to the Crown Suites Limitation Ordinance to prove his exclusive possession together with the the required *animus possidendi* for the statutory period of years. No mention is made in that decision of any burden to be placed on the Defendant/State to prove its title in such circumstances. In the court's view, the position in that case is wholly distinguishable from the one in which the State wishes to exclude the individual from a parcel of land to which it claims title. In such a case the State bears the burden of proof as the party who alleges that it is entitled to possession. As a consequence, by virtue of the provisions of the Crown Suites Limitation Ordinance the State finds itself subject to its title being extinguished should it be unable to prove its title within the sixteen-year period immediately preceding the institution of its claim for possession. This in the court's view was the intention and purpose of the said Ordinance when passed into law many years ago.

85. The Claimant in the present case is the one who commenced action against the state as an individual who claims that the title of the State has been extinguished. The burden therefore lies with him to prove his exclusive possession for the required period of thirty years. Section 3 was not applicable in ***Gayadeen*** and it is clearly not applicable in this case.

86. Further, it was not the intention that the Ordinance confer automatic extinguishment of the title of the State. The Crown Suits Limitation Ordinance was modeled after the English Crown Suits Act 1769 (9 Geo. 3, c. 16) ("the English Act"). The purpose of the English Act was to allow for time to run against the State in respect of lands and to bar the State's right and extinguish its title at the end of the limitation period: See ***The Time Limit on Actions Being a Treatise on the Statute of Limitations and The Equitable Doctrine of Laches, John M. Lightwood. M.A. 1909 at page 152.*** The first clause of Section 1 of the English Act employs similar wording to the First Clause of

Section 2 of the Crown Suits Limitation Ordinance barring the State's right to bring an action to recover possession of the lands after the expiry of the limitation period.

87. The second clause of Section 1 of the English Act, which extinguishes the title of the State and transfers it to the subject was not reproduced in the Crown Suits Limitation Ordinance. The second clause of the English Act however corresponds to Section 22 of the Real Property Limitation Act Chap. 56:03, which extinguishes the title of individuals and not the State, at the expiration of the limitation period.

88. The court therefore agrees with and prefers the submission of the First Defendant that the omission of the second clause of Section 1 of the English Act from the Crown Suits Limitation Ordinance demonstrates that the law in this jurisdiction was specifically tailored to exclude the automatic extinguishment of the title of the State upon the expiration of the limitation period. It follows that unlike the position in English law as it then stood, the Crown Suits Limitation Ordinance only prevents the State from commencing an action for the recovery of lands at the expiry of the limitation period and nothing more.

Sub-issue 2- *whether the Claimant can attach Mr. Kannick's possession of the lands to his possession*

<u>The submissions of the Claimant</u>

89. Counsel for the Claimant submitted that the First Defendant has accepted that Mr. Kannick has been in possession of the lands prior to 1986. That the First Defendant disputed the occupation of Mr. Kannick from 1979 but conceded that he went into occupation of the lands sometime prior to 1986. Further, that the First Defendant has also accepted that Mr. Kannick put the Claimant in possession. Thus, it is the argument of the Claimant that he and his immediate predecessors have been in

occupation of the lands for more than the statutory period provided for in the Crown Suits Limitation Ordinance, namely thirty years.

The submissions of the Defendant

90. Counsel for the First Defendant submitted that the Claimant's case is that he has occupied the lands exclusively for in excess of twenty-six years. When combined with the occupation of his predecessor Kannick, over forty years. It was argued that no evidence was given of Mr. Kannick's possession of the lands other than that he was in possession in 1979 after Mr. Smith died. It was further argued that the evidence which has not been challenged by the Claimant is that Mr. Smith was alive in 1980. Consequently, the Claimant's evidence of the date of Mr. Kannick's occupation of the lands is unreliable. Further, it was contended that no evidence was given of the nature of Mr. Kannick's occupation of the lands, so that there was no basis for a finding that his occupation met all the characteristics of adverse possession. Also the Claimant provided no documentary evidence that Mr. Kannick conveyed his interest in the lands to the Claimant. As such, the First Defendant submitted that there is no basis on which the Claimant can tack Mr. Kannick's occupation of the lands to his.

Findings

91. According to ***Halsbury's Laws of England, Volume 87 (2012), 5th Edition, paragraph 279,*** a person is also to be regarded for those purposes as having been in adverse possession of an estate in land:
    i. where he is the successor in title to an estate in the land, during any period of adverse possession by a predecessor in title to that estate; or
    ii. during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own.

92. In calculating the period of thirty years therefore, all possession adverse to the interest of the State may be attached to the Claimant's possession. The essential issue therefore is whether the occupation of, Mr. Kannick was in fact adverse to the title of the State. This is where the case for the Claimant fails in the court's view.

93. According to the evidence in this case, Mr. Smith initially held a leasehold interest in the Pineapple estate by virtue of the original lease. Mr. Williams, Mr. Bharath and Mr. Marajh had joined together to purchase his rights. They could have only purchased for Mr. Smith, the interest which was vested in him at the time and no more, namely a leasehold interest. Mr. Kannick then bought twenty-five acres of the Pineapple estate from Mr. Williams. Mr. Kannick in turn sublet his portion to Mr. Arjoon Deyalsingh, Mr. Arnold Maraj, Mr. Parasram Sankar, an unknown person and the Claimant.

94. It follows that in law, Mr. Kannick and his tenants also held either a leasehold interest in the Pineapple estate or were entitled to a lease. The fact that consent was not obtained is irrelevant to the issue of the nature of the interest transferred. It cannot be that Mr. Williams sold more than he had, that is, he could not have sold a freehold interest in the lands when all that he held was a leasehold interest. It is axiomatic that one whose possession is granted by way of a leasehold interest or the entitlement to a lease does not possess adverse to the title of the person who would have granted the lease. As such the possession by Mr. Kannick could not have been adverse to the title of the state and cannot be attached to the title of the Claimant.

Sub-issue 3 – Whether the Claimant satisfied the requisite elements of adverse possession of the lands.

Law

95. The well-known authority of ***JA Pye (Oxford) Ltd v Graham (2002) 3 All ER 865*** sets out the applicable criteria for adverse possession and this court has had recourse to the principles established and traversed therein. According to ***JA Pye***, a claim to title by adverse possession is comprised of two crucial elements: factual possession and intention to possess (animus possidendi). Factual possession signifies a degree of exclusive physical custody and control and the question of whether the acts of the squatter are sufficient to meet this must depend on the circumstances of the case. The intention to possess means *"an intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with paper title ….so far as is reasonably practicable and so far as the processes of the law will allow."*: JA Pye supra, Lord Browne-Wilkinson, paragraph 43.

The Submissions of the Claimant

96. It is the submission of the Claimant that the payment of rent to the warden's office cannot be considered as being an act binding on the President. For this submission, the Claimant relied on ***Voleta Reed and Ors v Land Settlement Agency CV2009-02059.*** At pages 12 and 13 of Voleta supra, Madame Justice Gobin commenting on the Administrative aspect of State Lands, summarized the history in the following way:

"Paragraph 23: In our jurisdiction the Crown Lands Ordinance of 1918 vested power in the administration and disposal of Crown Lands exclusively in the Governor General as Intendant of Crown Lands. It also introduced the office of Sub-Intendant of Crown Lands. This is the predecessor to the post of Commissioner of State Lands. Section 6 (1) of the Ordinance charged the sub-intendant inter alia with the prevention of squatting."

Paragraph 25: "….. I am inclined to the view that outside of his statutory source, there is no law which authorizes any action to recover State Lands. I have found

support for this approach to the effect of a statue on prerogative rights to property in the judgment of Chief Justice Wooding in the case of Attorney General v Maharaj and Maharaji 1996 Vol. WIL 53."

97. As such it is the argument of the Claimant that the original lease could not have been extended after it expired in 1974. Therefore, the State's right to re-enter occurred in 1974 and time began to run against the State from this year.

98. Further, Counsel for the Claimant argued that the agreement of the 31st January, 1980, whereby Mr. Smith assigned all his leasehold interest in the Pineapple estate to Mr. Lutchminarine Marajh, Mr. Samuel Bharath and Mr. Leonard Williams was a violation of the original Lease and there is no evidence that the State ever exercised its right of re-entry either for the violation of the terms of the original lease or upon its termination.

99. Moreover, Counsel for the Claimant submitted that the Crown Suits Limitation Ordinance provides no provision that allows any acknowledgement to interrupt the period of possession. That the court must be guided by the intention of Parliament as described in the words they used in the Statue and there is no reason to expand the limit placed by the Parliament. Additionally, that a request to regularize tenure is not an acknowledgment.

100. Counsel for the Claimant relied on the case of ***Hamilton v the King (1917) 54 SCR 331,*** in which it was argued that a letter written in 1871 and a petition filed in 1890 constituted acknowledgments of title which were said to interrupt the running of the statute. It was held that the letter did not amount to an acknowledgment of title in the Crown. Duff J at page 369 and 370 stated "*...The letter contains a declaration that the rights of the writers "cannot be alienated" and in view of that I do not think the letter can be regarded as an acknowledgment of title…"* Further, Davies J at pages 344 and 345 stated that "… *The "Nullum Tempus Act" does not contain any reference to acknowledgments of title as staying the running of the period of prescription, but it*

does provide that an interruption by entry and receipt of the rents and profits by the Crown shall stay the running of such period. It would seem a bold step for the Court to add yet another fact or incident to those the Nullum Tempus statute expressly mentions as interrupting possession against the Crown."

101. As such it is the contention of the Claimant that similar to the Canadian Statute, the Crown Suits Limitation Ordinance made no provision for the issue of acknowledgment interrupting the period of possession. Counsel for the claimant further contended that in any event no such acknowledgment has been proven by the First Defendant.

The submissions of the First Defendant

102. Counsel for the First Defendant contended that time did not begin to run against the State in 1974, upon the expiration of the original lease. It was submitted that the evidence clearly demonstrated that Mr. Smith, Mr. Lutchminarine Marajh, Mr. Samuel Bharath and Mr. Leonard Williams at all times acknowledged the State as the owner of the Pineapple estate.

103. It is the argument of the First Defendant that the Claimant failed to take into consideration that by remaining in occupation of the Pineapple estate after the expiration of the original lease and paying rent, a tenancy arose in favour of Mr. Smith. That as there was no evidence of Mr. Smith having reached an agreement with the Landlord (whether through the President or any other duly authorized person) to alter the terms of the original assignment, the tenancy was deemed to be on the same terms of the original assignment. According to the First Defendant, the tenancy arose on the bases of the landlord (the President) and Mr. Smith impliedly agreeing by their conduct that the tenancy would be renewed.

104. Counsel for the First Defendant submitted that while it is true that the First Defendant accepted in its pleaded case that the Claimant went into occupation of the lands in 1986, the evidence adduced at trial strongly suggested that the Claimant's occupation commenced at a later date. That in any event, by the Claimant's own admission, and contrary to his pleaded case, he was not in possession of 100% of the Lands until 1991. It was argued that there is no evidence in relation to what, if any part of the Lands, the Claimant occupied prior to 1991. That on the evidence of the Claimant that he occupied 100% of the Lands in 1991, the thirty-year limitation period would expire in 2021.

105. Counsel for the First Defendant accepted that under the Crown Suits Limitation Ordinance, an acknowledgment does not stop the limitation period from running. However, it was submitted that an acknowledgment while not stopping the limitation period from running may have the effect of demonstrating that the possessor does not have the intention to possess the lands. As such, the First Defendant submitted that where an occupier of property writes a letter to the true owner seeking to buy or rent the property, that act will implicitly recognize the title of the owner: ***Jourdan Q.C., Stephen and Oliver Radley-Gardner. "Adverse Possession" 2003 Paragraph 16-57***.

106. Counsel for the First Defendant submitted that the Claimant's acknowledgment of the State's title by his application to be regularized, his failure to exclude the State from the Lands and recognition of the State's control of the land by requesting assistance to obtain a water connection suggest that the Claimant did not have an intention to possess the Lands. Counsel for the First Defendant relied on the case of ***Powell v McFarlane (1979) 38 P & CR 452,*** where Slade J stated at page 476 that:

"the courts will in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best as he

can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."

107. Conclusively, Counsel for the First Defendant submitted that the Claimant failed to produce any evidence to displace the obvious inference that he did not intend to exclude the State and accordingly, he has failed to prove on the balance of probabilities that he had the requisite animus possidendi.

Findings

108. Mr. Smith became a tenant holding over by remaining on the Pineapple estate after the expiration of the original lease. The argument of the Claimant that the lease could not be renewed at its date of expiration in 1974 because by then the Governor General had been replaced by a President and the power to renew devolved to the Commissioner of State Lands is, with the greatest of respect, a fallacious one. The law may have effected a change to the office holder in whom the power to renew was vested but the law did not change the substantive principles which govern tenancy rights. Those in substance remained the same. The argument therefore holds no merit whatsoever. Taken to its logical limit, had the submission of the Claimant been correct, it would have followed that no tenant whose lease expired in those circumstances would have been entitled to a renewal and such tenants could not have held over. Such tenants would have immediately become trespassers, quite an untenable situation.

109. Therefore, the Court finds that time did not begin to run against the State at the expiration of the original lease as Mr. Smith continued paying rent and was entitled to have his lease renewed.

What was the period of occupation of the Claimant and did he have the animus possedendi

110. The resolution of this issue is heavily dependent on findings of fact. It is the evidence of the Claimant that he was put into occupation of lands in 1986 but went into full cultivation of the lands in 1991. The Claimant testified that he has planted several short crops on the land and has since constructed a three-bedroom house on the land. According to the evidence of the Claimant, after he married in the year 1996, he commenced construction of the three bedroom house, however up to the year 2006, he maintained two residences as he had a house in Cunupia.

111. As a matter of common sense, it is abundantly clear that the Claimant having been born in the year 1974, he would have been some twelve years of age in the year 1986. According to the evidence of the Claimant during cross-examination, he received both a primary school and secondary school education. The Claimant left school in 1990 at the age of 16 and worked at Ansa Mc Cal for a short period of time.

112. Further, by letter dated the 9th August, 2007, the Ministry of Agriculture acknowledged that the Claimant has been farming on the lands for the past sixteen years. Sixteen years from 2007 is the year 1991. During cross-examination, the Claimant testified that this letter referred to the cultivation of the land and not the time he went into possession of the lands.

113. In the court's view, the twelve-year-old could not have gone into exclusive occupation of the lands with the required animus in the year 1986, while at school full time. That simply is not plausible. The evidence in totality is weighted in large measure in favour of occupation coinciding with his cultivation in the year 1991. This in the court's view is more likely, is the reasonable inference on the evidence and the court so finds.

114. By letter dated the 11th October, 2005, the Claimant wrote to the Director of Land Administration for regularization of his occupancy of the lands. The contents of that letter is set out below:

"Dear Sir/Madam,

I, Deochan Sampath of the above address, have been occupying a twenty-five (25) plot of land situated at Smith Drive Mausica, for the cultivation of food crops for the past sixteen (16) years.

I am applying to be regularized jointly with my wife Mrs. Asha Sampath, to continue cultivation.

Any assistance that can be given in this venture, would be greatly appreciated. Thanking you in advance.

Yours respectfully,
Mr. Deochan Sampath."

115. This letter in the courts view goes against the fulcrum of the Claimant's case. The witness for the Defendant, Mr. Ian Fletcher testified that regularization is the process of conferring title to persons who occupy state lands without a tenancy, after investigations. In the Court's view, the evidence of this witness demonstrates that the policy of the State is to monitor those persons who occupy state lands without leases to ensure that they are in fact conducting the activities of farmers as they claim with a view to granting leases to them. Nowhere in his evidence does the witness speak of grants of freehold title by the state as part of the process of regularization. In fact, the evidence appears to speak to a policy to encourage proper cultivation and husbandry on agricultural lands and the need to regularize those who have been in occupation for sometime. The lands which form the subject of this claim are lands designated for agricultural purposes and there appears to have been no evidence of approval of change of use.

116. It is the finding of the court that the contents of the letter acknowledged firstly that title was vested in the state. Secondly, that the Claimant was a farmer on those lands for a period of time, and was seeking to have the state either grant him a lease or perhaps a freehold title. Either way the contents of the letter demonstrates nothing less than a clear unambiguous acknowledgement of the State's title to the lands.

117. It accords with common sense that the Claimant could not have and in fact did not have an intention to possess the lands to the exclusion of the state. Further, the letter demonstrated that the Claimant recognized that his occupation of the lands was limited to state's permission until regularization of his occupancy by the State. So that while an acknowledgment could not have had the legal effect of stopping the limitation period from running, in this case, the letter amounts to an acknowledgement which had the effect of demonstrating that the possessor did not have the intention to possess the lands to the exclusion of the state.

118. Moreover, the Claimant testified that he visited the office of the Ministry of Agriculture to obtain the letter dated the 9th August, 2007. That letter was one from the Ministry of Agriculture to the Water and Sewerage Authority informing them that the Claimant had been in occupation of the lands and requesting that they assist him in relation to the connection of a supply of water. This letter likewise demonstrates clearly that the Claimant accepted that the State was the owner of the lands and that he required their assistance in its development.

119. Finally, the Claimant's evidence that officers from the Ministry of Agriculture would visit the lands unannounced and inspect same and that he has never attempted to hinder the access of the officers to the lands fortifies the finding of the court that he did not have the requisite animus possedendi.

120. According to the evidence of the Defendant, the Claimant's application for regularization was being processed from the date of his application which was 2005 until 2012. Consequently, the Claimant's occupation of the lands could not have been adverse until the State sought to retract its permission to allow the Claimant to occupy the lands.

121. The earliest the state sought to retract its permission was in the year 2011, when the Second Defendant entered upon the lands and began bulldozing parts of the lands

occupied by the Claimant. The Claimant therefore cannot succeed on a claim of adverse possession as the thirty-year period for a claim in adverse possession against the state has not been met.

122. In conclusion the court notes that in any event, had the Court found that the Claimant's occupation from 1991 was adverse to that of the title of State, the Claimant would still have not meet the requisite statutory limitation period of thirty years.

123. As a consequence of the Court's findings, the Claimant has not extinguished the title of the State to the lands and his claim will be dismissed. In relation to the claim against the Second Defendant for trespass, upon entry of liability by consent it was understood by the parties that the assessment would be referred to a Master upon determination of the case against the First Defendant.

124. The order of the court will therefore be as follows;

i. The Claim against the First Defendant is dismissed;
ii. The Claimant shall pay to the First Defendant the prescribed costs of the claim in the sum of Fourteen Thousand Dollars ($14,000.00).
iii. Damages in relation to judgment entered by against the Second Defendant by consent are to be assessed and costs quantified by a Master on a date to be fixed by the Court Office.

Dated the 19th day of July 2016

Ricky Rahim
Judge