

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO**

Claim No. CV 2008-02579

BETWEEN

VENICE ARTHUR CHARLES

Claimant

AND

HAROLD SEERATAN

First Defendant

ANN MITCHELL

Second Defendant

STANFORD ALLEYNE

Third Defendant

JENNIFER & NATHANIEL FORTUNE

Fourth Defendant

AND

JEAN COMMISSIONG

Intervenor

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. Michael Persadsingh for the Claimant

Mr. Garnet Mungalsingh for the Intervenor

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Judgment

Background

1. The Claimant Venice Charles seeks orders for **possession** against the four Defendants with respect to the four parcels of land, and **damages for trespass and mesne profits**.
2. The Intervenor was joined by order made on the 25th February, 2011 “so that all matters relating to the said lands can be resolved”.
3. The Claimant claims to be entitled to the above reliefs by virtue of **Certificate of Title registered in Volume 3754 Folio 221** dated May 23rd 1995, by which she became registered as proprietor of the parcel of land comprising TWO POINT FIVE ZERO TWO EIGHT (2.5028) hectares” (the said lands) or 6.18 Acres (2.5028 ha x 2.471). The four parcels of land occupied by the defendants form part of the said lands.
4. The claimant’s claim is based on that Certificate of Title. The application for the certificate of title, (the application), was itself based on her assertions that title devolved to her and her siblings, and/or that she became entitled to the said land by adverse possession.
5. The claimant claims that her grandmother Emma owned the said land, that Emma **gave** it to her father Felix, and when Felix died it passed to her mother Queen, and upon her death in 1986 it passed to the claimant and her siblings, (who consented to the claimant’s application for the said land to be vested in her).
6. The intervenor contends that:
 - i. the certificate of title was procured by fraud, and that it must be cancelled.
 - ii. she is entitled by adverse possession to a portion of the said land, which overlaps her own land, which she claims comprises 6 acres.

If the certificate of title was obtained by fraud, and is set aside, then the claimant's claim against the defendants would fail, as her title to the land that they occupy is based on that certificate.

7. The intervenor further contends that:

1. The area of land that the claimant claims was owned by Emma was 5 acres, as this was what was given to Emma under the will of her mother, Frances Cooper, dated November 24th 1944. Yet the application and the certificate of title are for in excess of 6 acres.

2. The claimant's father Felix could not have been "given" real property and in fact, in the absence of written documentation, it must have devolved to Felix **and his siblings**, and not to Felix alone.

3. The application referred to a grant of probate of Felix's estate, though in fact Felix died intestate and what was annexed was letters of administration **without the inventory**.

4. The inventory to Felix's estate did not refer to any real property, though it referred to cane and other personalty. This meant that Felix had not been "given" the said lands, or any land.

5. The fact that Felix had 2 siblings was also concealed from the Registrar General. In fact the claimant even denied the existence of one of those siblings, though her own witness revealed that Emma had a daughter called Doris, who was the sister of Felix. The said land would not have devolved to the claimant's father Felix alone, but to him **and his siblings**.

6. The claimant knew that the lands were vested in the estate of Emma Charles as she herself pleaded, she so told the persons on the lands in 1986. That being so she could not herself acquire a title by adverse possession against the estate of

Emma, as she was the legal personal representative, and therefore in a fiduciary position with respect to the land, which was trust property.

Issues

8.

1. Was the certificate of title procured by fraud?
2. Must it be set aside?
3. If it is set aside does the claim against the defendants fail?
4. Has the intervenor established her claim by adverse possession to the said land or any part thereof?

Conclusion

9. I find as follows:-

- (i) The 5 Acres of land left by Emma Charles did not devolve by operation of law to Felix Charles. Emma Charles had other children. The Claimant's father Felix Charles was one. Others included Doris, and Percy.
- (ii) The application was in respect of 2.5028 hectares or 6.18 Acres (one hectare = 2.471 Acres). This is in excess of the 5 Acre parcel, allegedly given by Emma Charles to the Claimant's father Felix Charles, (according to the application), or which (as pleaded) "devolved to Felix Charles by operation of law";
- (iii) Emma Charles did not **give** the said lands to Felix Charles. The inventory of the estate of Felix Charles (signed and sworn to by the Claimant's mother as being correct), makes no mention of any lands whatsoever;
- (iv) The land taxes for the said lands were not paid by the Claimant, or her parents, or cousin Fitzroy Fortune. The attempt to suggest that they did so, in an attempt to suggest that this was consistent with the ownership of the claimant and her predecessors in title, is false and misleading. It is another matter which goes to the bona fides of the application.

- (v) There were “several **tenants**” on the said lands (paragraph 5 of affidavit sworn to on the 27th October, 1992), but these tenants were not tenants of the Claimant or her predecessors. They were paying rent to Joseph Commissiong and Samuel Cooper. The claimant did not reveal this at the time of her application. If this had been revealed then the basis on which the tenants were paying rent to someone other than the claimant would have been investigated. The claimant’s statement simply that there were tenants, on **affidavit** in the application, was disingenuous and misleading, and clearly intended to convey the impression, which it did, that they were her tenants. In fact, given the intent of this representation, and the substantial benefit she derived from it, and the other misrepresentations that she made, (including suppressing the potential interests of the other siblings of her father Felix), I find that this assertion was fraudulent.
- (vi) The claimant’s certificate of title was obtained by fraud and it must be set aside.
- (vii) The claimant’s claim against the defendants fails and is dismissed.

Disposition and Orders

10.

- (i) The Claimant’s claims against the Defendants are dismissed.
- (ii) An order is granted that the certificate of title in Volume 3754 Folio 221 be set aside on the ground that the said Certificate was obtained by fraud.
- (iii) An order is granted that the Claimant do forthwith deliver up to the Registrar General the said Certificate of Title registered in Volume 3754 Folio 221 for cancellation, and in any event that the Registrar General do rectify his records accordingly to reflect such cancellation;
- (iv) The Intervenor’s claim to a declaration that she has been in continuous adverse possession of a portion of the said lands fails, and is dismissed.
- (v) An injunction is granted restraining the Claimant whether by herself, her servants or agents from entering or remaining upon or interfering with the use and occupation of lands currently occupied by the Intervenor or the Defendants.

- (vi) The Claimant is to pay \$10,500.00 being $\frac{3}{4}$ of the Intervenor's costs in respect of the trial of this action. (A significant part of the trial was concerned with the claimant's certificate of title and the Intervenor has successfully challenged the bona fides of that certificate and established that it was fraudulently obtained.)
- (vii) Liberty to apply.

Analysis and reasoning

The evidence

The Claimant's pleaded case

11. In her Amended Statement of Case the Claimant alleges that sometime in the year 1986 the four Defendants started constructing houses on four parcels of lands. Upon seeing the construction taking place the Claimant asked the Defendants by whose authority they were occupying the said lands "*and was told by the Defendants that one Joseph Commissiong and one Samuel Cooper rented them their respective parcels*".

12. The Claimant alleges she informed the Defendants that she was the Legal Personal Representative of Queen Mc Intosh Charles" and neither the said Joseph Commissiong nor the said Samuel Cooper had any right to collect rent from the Defendants. "The Claimant informed the Defendants that all rents must be paid to the Claimant on behalf of the estate of Emma Charles (deceased)" (paragraph 4 of the Amended Statement of Case).

13. It was contended that this is a clear acknowledgment that title to the said lands was vested in the estate of Emma Charles, deceased and that the Claimant appreciated this in 1986, 6 years before she made the application, in 1992, to bring the said lands under the (then) Real Property Ordinance (Ordinance).

14. The Claimant at paragraph 6 of her Amended Statement of Case asserts that:-

1. She received the Certificate of Title in 1995 and
2. The said lands were originally vested in one Emma Charles (the Claimant's grandmother), who died in 1950;

3. The said lands then devolved **by operation of law** to the Claimant's father Felix Charles, who died in 1955, and
4. Again **by operation of law** the said lands devolved to the Claimant's mother, Queen Charles, who died in 1986,
5. As no one applied for the estate of Emma Charles, the Claimant had to apply for the estate of Emma Charles, then the estate of Felix Charles, and then the estate of Queen Charles. Only in 1995 did the Claimant obtain Certificate of Title in Volume 3754 Folio 221 with respect to the said lands.

High Court Action No. S 563 of 2004

15. On the 23rd April, 2004 the Claimant filed **High Court Action No. S 563 of 2004** against nine Defendants, including the four defendants in these proceedings. In the said High Court Action No. S 563 of 2004 the Claimant says that in 1986 the nine Defendants constructed dwelling houses on the said lands, and when she inquired **they told her that Joseph Commissiong and Samuel Cooper had rented them their respective parcels.** Upon being so informed, the Claimant informed those Defendants that the said lands do not belong to either the said Joseph Commissiong or Samuel Cooper and that they should not pay rent to them, after which the Defendants **ceased paying rents, either to the claimant** or to Cooper or Commissiong. The Claimant then made an application to bring the lands under the Real Property Ordinance Chapter 27 No. 11 (the Ordinance).

The Application to bring the said lands under the provisions of the Real Property Ordinance

16. The Claimant made the application to bring the said lands comprising 2.5028 ha (6.18 Acres under the provisions of the (then) Real Property Ordinance Chapter 27 No. 11 (the Ordinance)) on two bases, namely,

- i. that title to the said lands devolved to her from Frances Cooper who left it by will to Emma Charles – her grandmother, who then allegedly “gave” it to her father Felix, from whom it then passed on death to her mother, Queen, and then the claimant and her siblings, and

ii. that she and her predecessors have been in possession of the said lands “long before 1945”.

17. Such an application must be bona fide. It certainly must not be made fraudulently.

Fraud

See **Roberts v Toussaint and Others (1963) 6 WIR 431 at 433 Wooding CJ.** (all emphasis added)

“Moreover, in actions in which a registered title is being impeached, *fraud means some dishonest act or omission, some trick or artifice, calculated and designed to cheat some person of an unregistered right or interest*: See *Waimiha Sawmilling Co v Timber Co* ([1926] A C 101 PC, 38 Digest (Repl))”

*The meaning of fraud in the context of this enactment is well settled. In **Waimiha Sawmilling Co v Waione Timber Co (1) (1926] AC at p 106), Lord BUCKMASTER stated in reference to a parallel statutory provision in New Zealand that “fraud” in actions seeking to affect a registered title meant actual fraud or dishonesty of some sort and was to be distinguished from constructive or equitable fraud which denoted transactions having consequences in equity similar to those which flow from actual fraud. Accordingly, unless the respondents established this kind of fraud they could not hope to succeed in their claim against the appellant. Roberts v Toussaint and Others (1963) 6 WIR 431 at 437 - 438 per Hyatali JA.***

In **Ramdeo Jaikaran v Soogrim Binda and Jawalopersad Binda No. S2928 of 1986** at page 38-9 per the Honourable Gopeesingh J (as he then was) considered the issue of fraud and also applied the case of *Waimiha*

“... And in any case *other than as aforesaid*, the production of the original grant, certificate of title, or other instrument shall be held, both at law and in equity, to be an absolute bar and estoppel to any such action against the person named in such instrument as the proprietor of the land therein described, any rule of law or equity to the contrary notwithstanding: provided

In Waimiha (supra), Lord Buckmaster said, at pages 106 and 107:

*“Now fraud clearly implies some act of dishonesty.....If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent,.....it is not, however, necessary or wise to give abstract illustrations of what may constitute fraud in hypothetical conditions, for each case must depend upon its own circumstances. **The act must be dishonest, and dishonesty must not be assumed solely by reason of knowledge of an unregistered interest.**”*

Ramdeo Jaikaran v Soogrim Binda and Jawalopersad Binda No. S2928 of 1986 at page 38-9 per the Honourable Gopeesingh J (as he then was)

18. The Honourable Hamel Smith J (as he then was) said in **HCA No. T92 of 1985 Lenore Walcott (Sole Executrix of the last will of CATHERINE ALLEYNE, deceased v John Clement Alleyne)** stated at page 10;

“Fraud does not necessarily arise from one’s express declarations only. Sometimes, and more often than not, it hides its head in what one fails to disclose”

19. He further stated at page 10

“The Registrar General’s function in applications of this sort is not a passive one by any means. He cannot sit back, so to speak, and content himself that the provisions of the Ordinance afford protection to any aggrieved person by the use of a caveat. I do not pretend to suggest that he must be a busy body and concern himself with every and any allegation. His duty, nevertheless, is to ensure that the application itself is a bona fide one”.

20. If, the Claimant’s application is tainted with fraud, then the Certificate of Title registered in Volume 3754 Folio 221 issued to her with respect to the said lands, can be set aside - see section 143(b) of the RPO *infra*. In that case her claim against the four Defendants, based upon that Certificate of title, must be dismissed.

Section 143(b) of the RPO is as follows:-

143. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases:

....

*(b) the case of a person **deprived** of any land by fraud, as against the person registered as proprietor of such land through fraud; or as against a person deriving, otherwise than as a transferee bona fide for value, from or through a person so registered through fraud;*

21. The effect of section **143 (b)** is that no action for the recovery of any land shall lie against the registered proprietor **except in the case of a person deprived of any land by fraud, as against the person registered** as the proprietor of such land **through fraud**. The intervenor must establish that she is such a person *deprived of land by fraud*, and **that the claimant is a person registered** as the proprietor of such land through **fraud**.

22. I accept and find that the Claimant's application was tainted with fraud relating to:-

- i. **devolution of title to the said lands**, including non disclosure of the inventory for the estate of Felix Charles;
- ii. **non disclosure, and concealment, of claims to the said lands by other parties;**
- iii. **false sworn assertions concerning the land taxes** allegedly paid for the said lands.

Devolution of title to the said lands

23. The applicant in her two (2) affidavits both sworn to on the 29th day of October, 1992 in support of the Real Property Ordinance application set out how she claimed to become entitled to the said lands as follows:-

- (1) **Francis Cooper** by her last **Will** and Testament specifically **devised** a parcel of land comprising **Five Acres** together with the wooden tenement thereon, (being part of the family property comprising Sixteen Acres situate at 6th Company Village in the Ward of Savana Grande), to **Emma Charles**,

(2) **Emma Charles gave** the said lands **to her son Felix Charles** (paragraph 3 of the Claimant's affidavit sworn to on the 29th October, 1992). However

a. the devise to Emma Charles is of a parcel of land comprising **Five acres**. The said lands brought under the provisions of the Ordinance comprised **2.5028 ha or 6.18 Acres**. This is in excess of the Five Acres allegedly given by Emma Charles to Felix Charles.

b. **nothing is identified in writing** by which Emma Charles allegedly gave the said lands to Felix Charles. The only conclusion one can draw is that the alleged gift was oral. (In any event such alleged gift by Emma cannot have been of more than the Five Acres which was devised to her by Frances Cooper.)

24. Further, the alleged giving of the said lands by Emma Charles to Felix Charles cannot amount to "devolution by operation of law" from Emma Charles to Felix Charles.

(i) Felix Charles the father of the Claimant, died on the 13th May, 1955. The Claimant's mother, Queen Charles, also called Daisy Charles, allegedly, "obtained **probate** of his **Will** (see Grant of Probate 54 of 1956" (paragraph 4 of affidavit sworn by the Claimant on the 29th October, 1992 in support of her application under the Ordinance). In fact Queen Charles obtained a grant of **Letters of Administration** of the estate of Felix Charles and NOT a grant of probate.

(ii) Queen Charles died on the 5th March, 1986 leaving the Claimant and her siblings Emerald Charles, Eutrice Charles, Lenore Charles and Elizabeth Charles entitled to her estate all of which siblings consented to the application being made by the Claimant in her own name. (See affidavits sworn on the 29th October, 1992).

25. The Claimant's mother, Queen Charles, swore the inventory, signed and filed in the estate proceedings of the Claimant's father Felix Charles, was correct. It sets out the assets of which Felix Charles deceased was seised and possessed at the time of his death on the 13th May, 1955. These comprised

i. one old wooden tenement, **standing on lands of Fortune Cooper \$200.00**

ii. 31.06 tons of cane **\$248.48** and

iii. three (3) tons of ratoon cane, **standing on lands of Fortune Cooper – \$18.00**

26. No mention is made in the inventory of the alleged 5 Acres which Emma Charles gave to Felix Charles. The total value of his estate was **sworn** as \$466.48 and comprised only those items.

27. The only conclusion to be drawn is that Emma Charles did not give Felix Charles the said lands. In that case it would only devolve by operation of law from Emma Charles to Felix Charles (**solely**), (and from Felix Charles to Queen Charles), **if Felix Charles had no siblings.**

Non Disclosure of Inventory

28. The Claimant did not disclose the inventory of the estate of Felix Charles in her application to the Registrar General. She only disclosed the grant of Letters of Administration.

29. If the inventory had been disclosed it would have negated the Claimant's allegation that Emma Charles gave the said lands to Felix Charles. The inventory would have revealed that Emma Charles did not "give" any lands to Felix Charles, as upon his death Felix Charles left no realty.

30. That would in turn have negated the allegation that the Claimant's mother, Queen Charles, and the Claimant and her siblings, would have inherited the said lands upon the death of Felix Charles on the 13th May, 1955. In fact Emma Charles, who died intestate, had three children, namely, Felix Charles, Percy Charles and Doris.

31. The Claimant under cross examination denied that Doris was the daughter of Emma Charles. She insisted Emma Charles had only two sons Felix Charles and Percy Charles. This was contradicted by her own witness Theresa Elliot, who testified that Emma Charles had three children including a daughter Doris. If in fact Emma Charles was the mother of Doris, then the devolution of title, by operation of law, is quite different from what the claimant attempted to indicate to the Registrar General in her

application. (The claimant also testified that Emma left a will for her father Felix. She believed her attorney had that alleged will. That appeared to be a fabrication under cross examination, and I do not accept it as there was no mention of such a will previously.

32. The beneficial owners of the said Five Acres of land owned by Emma Charles, who died intestate, would be the children of Emma Charles, deceased, if they survived Emma, namely, Felix Charles, Percy Charles, and Doris, or their respective estates, in equal shares.

33. In fact this is acknowledged by the Claimant who at paragraph 4 of her Amended Statement of Case says she told the Defendants that all rents must be paid to her **on behalf of the estate of Emma Charles**.

34. The said Doris, Felix Charles, and Percy Charles or their respective estates would be entitled to an equal share of the estate of Emma Charles, **and not Felix Charles solely** because:-

- (i) Emma Charles died intestate; and
- (ii) The Five Acres of land of Emma Charles would pass upon her intestacy **to her surviving children**, Felix Charles, Percy Charles and Doris, if they survived her, in equal shares;
- (iii) The oral giving of the said lands by Emma Charles to Felix Charles, without more, is ineffective ,and
- (iv) In any event it is clear from the inventory that the estate of Felix Charles did not comprise any realty;
- (v) Joseph Commissiong would be entitled to share in the one-third or other undivided share in the estate of Emma Charles, of his mother Doris, **if she survived Emma and if she made no will**.
- (vi) Doris is alleged to be the mother of Joseph Commissiong, deceased.
- (vii) The Intervenor is the widow and Administratrix of the estate of Joseph Commissiong, deceased.

(viii) In that case the intervenor, as Administratrix of his estate would be entitled to present such claim to such share as that estate may be entitled to.

(ix) The intervenor has therefore established that she is entitled to be considered as such a person deprived of land by fraud, because the claimant's certificate of title, and the material in the application therefor, precluded consideration of any claim to the said lands or part thereof by the estate of Joseph, (by devolution via Emma).

35. On the evidence presented in the said application to bring the said lands under the provision of the Ordinance, title to the said lands did not pass solely to **the Claimant and her siblings**. The Claimant's siblings' consents could not therefore make the Claimant solely beneficially entitled to the Five Acres of lands owned by Emma Charles.

36. It is clear that:

1. The Claimant knew of others entitled to a share in the estate of Emma Charles, and did not disclose this in her application.
2. Further, the Claimant knew others (Joseph Commissiong and Samuel Cooper) had rented out portions of the said lands to thirteen (13) tenants each of whom had constructed their homes in 1986, and did not disclose this in her application.
3. The inventory to the estate of Felix clearly revealed that Felix had not been given any real property, and that the lands on which his wooden tenement stood were lands of Fortune Cooper.
4. In any event Emma Charles could only give Felix Charles Five Acres, (the alleged gift being a basis of her claim), yet she sought a certificate of title to 2.5028 ha or 6.18 Acres.

37. These are fundamental non disclosures and go directly to the basis of her application for the Certificate of Title. It is clear that they must have been deliberate. They were designed and intended to result in the vesting of 6.18 acres of land in the claimant when she knew of the claims of other persons, and possible entitlements, to portions of the said lands. I find that that these omissions, even individually, and even more so collectively, were deliberate and fraudulent. **In Sumintra Narine (In her**

personal capacity and in her capacity as legal personal representative of George Boodoo also known as George Bhoodoo, deceased) v Joseph Boodhoo H.C.A. 643/91 at page 15 the Honourable Blackman J stressed the gravity of a fraudulent application.

“Applicants who seek an order under the R.P.O. vesting lands in themselves for a fee simple must know that if they are dishonest and fraudulent in obtaining an order there is the risk that such an order would ultimately be set aside and that they may even have to face criminal charges.”

Other claims to the said lands – the “tenants”

Possession

38. It was submitted that the Claimant misled the Registrar General into believing that she and her predecessors in title were in continuous undisturbed possession of the said lands in excess of the statutory period of sixteen (16) years (from “before 1945” to 1992).

10. *Every applicant shall, when making his application, **deposit with the Registrar General all instruments or copies of instruments in his possession, or under his control, constituting or in any way affecting his title, and shall furnish a schedule of such instruments and also, if required, an abstract of title, and shall in his application state the nature of his estate or interest and of every estate or interest held therein by any other person whether at law or in equity, in possession or in futurity or expectancy, and whether the land be occupied or unoccupied, and, if occupied, the name and description of the occupant, and the nature of his occupancy, and whether such occupancy be adverse or otherwise, and shall state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect of which the application is made so far as known to him, and that the schedule so furnished includes all instruments of title to such land in his possession, or under his control, or of which he has knowledge, and shall make and subscribe, a statutory declaration as to the truth of such statement,...***

39. The Schedule to the Real Property Ordinance sets out a prescribed form for making an application to bring lands under the Real Property Ordinance (First Schedule-Form A) which incorporates the following declaration that an applicant must make.

*And I do further declare that **I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said land at law or in equity in possession or in expectancy other than is set forth as follows, that is to say (here state particulars of mortgages, encumbrances, dower, lease, or other interest to which the land may be subject), and I further declare that there is no person in possession or occupation of the said land adversely to my estate or interest therein** and that the said land is now (here state the name and description of occupier or **that the land is occupied**) and that (here state the names and addresses of both owners and occupiers of lands contiguous thereto) and that there are no Deeds or instruments of title affecting such land in my possession or under my control or to my knowledge registered in the office of the Registrar General, other than those enumerated in the Schedule hereto or at the foot hereof, and I make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Act, and **I am aware that if there is any statement in this declaration which is false in fact, or which I know or believe to be false, or do not believe to be true, I am liable to fine and imprisonment.***

40. In paragraphs 3 and 4 of one of her two affidavits sworn on the 29th October, 1992 the Claimant swore that since she knew herself (she having been born on the 14th May, 1929) she has been living on the said lands, that her father Felix Charles lived on the said lands with his family until he died on the 13th May, 1955, that thereafter the Claimant and her siblings lived on the said lands ,that her mother Queen Charles died on the 5th March, 1986, and that thereafter the Claimant and her siblings continued to live on the said lands, “ *and are still in possession* ”

The Tenants

41. In the Claimant's affidavit sworn to on the 29th October, 1992 at paragraph 5 (last sentence) the Claimant swears, "*...there are several tenants on the lands as shown on the list hereto annexed*".

42. In a further affidavit sworn to on the 27th April, 1993 at paragraph 4 she gave the names of thirteen (13) persons whom she swore were tenants of the said lands, clearly implying that they were her tenants. Of the thirteen (13) persons named by the Claimant as her tenants - in that 1993 affidavit - **two are named as Defendants in these proceedings**, namely Stanford Alleyne and Jennifer Fortune, and **four are named as Defendants in High Court Action No. S563 of 2004**, and are characterised therein as trespassers.

43. {Claudius Morris (First Defendant in HCA S 563 of 2004 and No. 13 at paragraph 4 in her affidavit of the 27th April, 1993), [2] Adolf Christian (Second Defendant in HCA S 563 of 2004 and No. 11 at paragraph 4 in her affidavit of the 27th April, 1993), [3] Enos Dover (Fifth Defendant in HCA S 563 of 2004 and No. 7 at paragraph 4 in her affidavit of the 27th April, 1993), [4] Jacob Isaac (Sixth Defendant in HCA S 563 of 2004 and No. 9 at paragraph 4 in her affidavit of the 27th April, 1993), [5] Stanford Alleyne (Eight Defendant in HCA S 563 of 2004 and No. 2 at paragraph 4 in her affidavit of the 27th April, 1993 and **Third Defendant in these proceedings**) and [6] Jennifer Fortune (Ninth Defendant in HCA S 563 of 2004 and No. 6 in paragraph 4 of her affidavit of the 27th April, 1993 and **Fourth Defendant in these proceedings**)}.

Claimant's tenants?

44. In fact at paragraph 9 of the Claimant's Reply and Defence to Counterclaim of the Intervenor (filed on the 18th March, 2011) the Claimant swears that
*"9. In answer to paragraph 16 of the Intervenor's defence the Claimant repeats that the several persons listed therein were **the Claimant's tenants** from whom Joseph Commissiong fraudulently collected rent"*.

and at paragraph 6 “*that the said Joseph Commissiong illegally collected rents from some of the Claimant’s tenants which the Claimant put a stop to in 1986*”.

Tenants of Joseph Commissiong and Samuel Cooper?

45. The nine Defendants in HCA S 563 of 2004 action told the Claimant **in 1986** that they were tenants of Joseph Commissiong and Samuel Cooper.

46. At paragraphs 3, 4 and 8 of H.C.A. S 563 of 2004, and paragraphs 3, 4, 7 and 10 of the Amended Statement of Case in the instant proceedings, she avers that, contrary to what is set out at paragraph 9 of the Claimant’s Reply and Defence to Counterclaim, that the tenants were put into possession by, and paid rent to, Joseph Commissiong and Samuel Cooper.

47. The Claimant admits that she observed the Defendants (nine Defendants in High Court No. S 563 of 2004 and four Defendants in these proceedings) constructing their respective houses in 1986 (which construction they completed in 1986) and upon inquiries made by her **all the Defendants told her that Joseph Commissiong and Samuel Cooper rented them their respective plots of tenanted lands.**

Further, **they refused to pay rent to her**, either in 1986, or when she showed them her certificate of title in 1995.

The 2004 pleadings

48. In the said High Court Action No. S 563 of 2004 filed on the 23rd March, 2004 against *inter alia*, the third and fourth Defendants in these proceedings there is pleaded at paragraphs 3 and 4 as follows:-

“3) Sometimes in the year 1986 the Defendants herein at different times during 1986 constructed dwelling houses on the said Lands they respectively occupy. The Plaintiff on seeing the constructions taking place asked the Defendants by whose authority they occupied the said lands and the Plaintiff was told that one Joseph Commissiong and Samuel Cooper rented them their respective parcels.”

*“4) The Plaintiff informed the Defendants that the said lands do not belong to either the said Joseph Commissiong nor the said Samuel Cooper and the Defendants should not pay rentals to the said Joseph Commissiong nor Samuel Cooper. Thereafter **no rental were (sic) paid either to the Plaintiff nor to the said Joseph Commissiong nor to the said Samuel Cooper.**”*

The instant proceedings

49. What is set out in paragraphs 3 and 4 of the 2004 proceedings is repeated at paragraphs 3 and 4 of the Statement of Case in these proceedings filed on the 9th July, 2008 as follows:-

“3. Sometime during the year 1986 the Defendants herein started constructing houses on the respective 1st, 2nd 3rd and 4th parcels of land.”

*“4. The Claimant herein, on seeing these constructions taking place asked the Defendants herein by whose authority were they occupying the said lands, and was told by the Defendants that one Joseph Commissiong and one Samuel Cooper rented them their respective parcel. The Claimant then informed the Defendants that she was the Legal Personal Representative of Queen Mc Intosh Charles (deceased) and neither the said Joseph Commissiong nor the said Samuel Cooper had any right to collect rent from the said Defendants. The Claimant informed the Defendants that all rents must be paid to the Claimant **on behalf of the estate of Emma Charles (deceased)**”.*

The claimant’s witness statement

50. At paragraphs 4, 5 and 6 of her amended Witness Statement the Claimant swears as follows:-

*“4. In or about the year **1983** I discovered Stanford Alleyne, the 3rd Defendant herein, clearing a parcel of my lands on which sugar cane was grown.”*

“5. Accompanied by my cousin Hamil Charles, a post inspector who is now deceased I went to the home of the 3rd Defendant and asked him who gave him

*permission to clear my lands. I was told by the 3rd Defendant that **one Mr. Joseph Commissiong had rented a portion of my lands to him.**”*

*“6. From the 3rd Defendant’s home my cousin and I accompanied by the 3rd Defendant **went to my lands where we met the said Mr. Joseph Commissiong.** In the presence of the said Mr. Joseph Commissiong, I told the 3rd Defendant not to pay any rent to the said Mr. Joseph Commissiong, because those said lands did not belong to the said Mr. Joseph Commissiong.”*

The application

51. These matters which occurred in 1983, or 1986, were not brought to the attention of the Registrar General in the application made in **1992** to bring the lands under the Real Property Ordinance (now Act) (“ the application”). It is clear that the Claimant knew of claims by Joseph Commissiong and Samuel Cooper, and by the tenants, since at least 1986, and possibly earlier, in 1983.

52. In the application the claimant represented these alleged trespassers to be her tenants. They cannot be both trespassers and her tenants. To present them as her tenants when it suited her was a deliberate attempt to mislead the Registrar General that the Claimant and her predecessors were in **exclusive** control of the said lands including the tenanted lands.

53. It is misleading for her to simply describe them as tenants, (and characterize them as **her** tenants in her Reply and Defence to Counterclaim), and further allege that other persons were fraudulently collecting the rents, when in fact she knew:

- a. they did not pay rent to her,
- b. they were not put into possession by her, and
- c. in fact they had been paying rent to other persons, Joseph Commissiong and Samuel Cooper, who had put them into possession.

54. It is clear that she intended to convey the impression that those persons intended to pay rent to her, that they were put into possession by her or her predecessors in title, and that other persons were collecting rents that she, the claimant, was entitled to.

Trespassers/Adverse possessors?

55. She had not placed them in occupation of the lands that she claimed to own. She knew that as far as she was concerned the Defendants were not tenants, but were in unlawful occupation as trespassers.

56. The attempt to characterize those persons as her tenants, who impliedly acknowledged her right to the said lands, but whose rents were being fraudulently collected by other persons, was highly misleading. They were not her tenants.

57. Obviously, if Joseph Commissiong and Samuel Cooper were collecting rents from persons on the said lands, then there was an issue to be investigated as to the basis on which they purported to do so.

58. This is significant as the claimant was required to inform the Registrar General in the application if she was aware of anyone else making a claim to the said lands. She herself has confirmed that she was so aware of such a claim and that there were persons whose possession of the said lands was adverse to her interest.

59. Prima facie therefore the claimant's title or claim to the said lands would not have been unchallenged. It is therefore not true that the Claimant was in continuous undisturbed possession of the said lands, when the evidence of the claimant herself is that:-

- i. she was aware Commissiong and Cooper had put persons into possession of some of the land and were collecting rent from tenants,
- ii. she was aware that those tenants stopped paying rent in 1986 to Commissiong and Cooper, and

iii. she was aware that they never paid rent to the Claimant or acknowledged her as the owner of the said land, to the extent that she had to institute proceedings against them in trespass in an attempt to obtain possession. She was therefore aware in 1992 of persons in possession of several portions of the said lands with interests adverse to hers.

Possession - Other inconsistencies

60. The Claimant's application for the certificate of title was supported by two witnesses, Leonard Herbert and Derrick Forde.

Leonard Herbert

61. In his affidavit sworn to on the 29th October, 1992 Leonard Herbert swore, "*her father died first and then her mother and they were both buried from that house. The children used to live in it up to 1988 but as the house became very old they all left. Venice Charles Arthur lives about 1 mile away and she plants up the land in short crops and reaps the coconut growing thereon*" (paragraph 4). Leonard Herbert further swears that "*thirteen lots are **occupied by tenants who have houses** on the said lands since 1986*".

62. At paragraphs 3 and 4 of one of the two affidavits sworn to by the Claimant on the 29th October, 1992 the Claimant swore as follows:-

"3. I was born on the 14th day of May, 1929 and since I know myself I have been living on the said lands. My father, Felix Charles lived there with his family until he died on the 13th May, 1955. He was in occupation of the said lands as he told me and I verily believe that his mother Emma Charles also called Emma Charles Cooper had given it to him, she having gotten it from her mother Frances Cooper by will dated the 24th November, 1944 (Protocol of Will No. 222 of 1945). To the best of my knowledge and belief my predecessors and I have been in possession of the said lands long before 1945".

"4. When my father died in 1955 my mother Queen Charles obtained probate of his Will (see deed of assent No.36 of 1946 – (struck out and replaced in

handwriting by “Grant of probate No. 54 of 1956”), and she, my sisters, brothers and **I continued to live on the said lands**. Queen Charles died on the 5th day of March, 1986 and his children Emerald Charles, Eutrice Charles, Lenore Charles, Elizabeth Charles and myself Venice Charles Arthur **continued and are still in possession of the said lands**. My brothers and sisters have consented to my application to have the said lands vested in me. During all these years **we have lived on the said lands and up to 1975 cultivated canes thereon. Since then we have planted coconut trees and short crops.**”

63. The Claimant did not reveal in her affidavit sworn to on the 29th October, 1992 that she ceased living on the said land in 1988 and since then lives a mile away. It is not necessary that she actually live on the said land for her claim to possession of it to succeed. See *Walcott* at page 7.

It is necessary however for her to be truthful in her affidavit about whether she lived there or not. In this case her claim to possession of the land is based on physical occupation and planting sugar cane – up to 1975, and thereafter changes to one based on physical occupation and “reaping coconuts” and planting short crops. If she had revealed that since 1988 she had ceased physical occupation, and that other persons were living on the said lands who did not pay her rent or acknowledge her title, this would have been material.

64. Leonard Herbert at paragraph 5 of his affidavit swears there were 13 lots **occupied by tenants** as does the Claimant at paragraph 4 of her affidavit sworn to on the 27th April, 1993, giving the false impression that the tenants were the tenants of the Claimant.

Roopchand Deonanan

65. He swore an affidavit on the 9th October, 1991 attesting to his survey of the said lands on the 6th June, 1991 and annexed a survey plan of the said lands comprising 2.5028 ha (or 6.18 Acres). Curiously, none of the tenants’ houses is shown on the survey plan by Land Surveyor Roopchand Deonanan of the said lands dated the 19th July, 1991.

That survey plan formed part of the Claimant's said application to bring the lands under the provisions of the Real Property Ordinance.

Derrick Forde

66. Derrick Forde swore to an affidavit on the 29th October, 1992 in which he also swore that the applicant ceased to live in the house on the land in 1988.

Land Tax

67. In her affidavit sworn to on the 29th October, 1992 the Claimant alleged that,
“5. The taxes for lands were paid by my father, my mother and myself by giving our share of the money to Fitzroy Fortune, a cousin, who pays the taxes for the entire parcel having collected from the family.” (Paragraph 5)

68. In another affidavit sworn to the said 29th October, 1992 (to which a schedule of tenants marked “A” is annexed) there is annexed:-

- (i) An extract of the assessment rolls;
- (ii) Letter dated the 7th September, 1992 written by the Revenue Officer IV/Warden, Victoria, Princes Town.

69. In support of the allegation that their share of the land taxes was given to their cousin Fitzroy Fortune, there is exhibited as item 3 of the said schedule A (annexed to one of the Claimant's affidavits sworn on the 29th October, 1992) **8 receipts from 1964 to 1991** as evidence of payment of “our share” of land tax to Fitzroy Fortune. These are as follows:-

- (i) Receipt dated the 17th May, 1964 to “Daisy Charles’ from ‘Uril Cooper” for **“land rent”;\$2.76**
- (ii) Unsigned receipt dated the 26th June, 1966 issued to Daisy Charles for **“taxes”;**
\$5.00
- (iii) Receipt dated 19th April 1967 issued by “Hughran Mc Leod for **Joseph Fortune”** to Daisy Charles for **“yearly taxes for land”;** **\$3.00**

- (iv) Receipt dated the 12th June, 1967 issued by **Joseph** Fortune to Daisy Charles for **“water rates and yearly taxes”;\$5.00**
- (v) Receipts dated the 23rd May, 1968 issued by **Joseph** Fortune to Daisy Charles for **“yearly land taxes and water rates”;\$5.00**
- (vi) Receipt dated the 27th June, 1972 issued by **Victoria** Fortune to Daisy Charles for **“house and land tax”;\$2.70**
- (vii) Receipt dated the 26th August, 1989 issued by **Uril** Cooper to Venice Charles for **“two years land tax for 88-89”;\$60.00**
- (viii) Receipt dated the 10th May, 1991 issued by **F. Fortune** to Venice Charles for **“land tax”.\$60.00**

70. There is one receipt from the Claimant’s cousin, Fitzroy Fortune to the Claimant for land tax. None of these 8 receipts directly evidences payment of land taxes to the District Revenue Office. There are no receipts evidencing payment of land tax by Fitzroy Fortune to the District Revenue Office. In fact the 1964 receipt dated the 17th May, 1964 issued by Uril Cooper to Daisy Charles, also known as Queen Charles, is for **rent** , suggesting that Queen Charles - Daisy Charles -was a tenant paying rent.

71. On the said Warden’s letter dated 7th September, 1992 it is stated *“that land taxes in the name of the Hrs. of Fortune Cooper have been paid for 1992 - Receipt 645227 dated the 13th January, 1992,”* and that *”there are several buildings entered on this property, a few of which have outstanding taxes since 1981. Assessment No. ZB 97 refers”*.

72. The extract of the assessment of rolls simply confirms payment of land tax in the name of Heirs of Fortune Cooper.

The receipts for *“our share”* of the land taxes (allegedly paid to cousin Fitzroy Fortune) in support of the allegation of payment of land tax:-

- a) Show no payment of land tax by Fitzroy Fortune to the District Revenue Officer;
- b) Shows a payment of **rent** for the year 1964 by Daisy Charles;
- c) Are not official receipts.

73. On the other hand the Intervenor's documentary evidence establishes payment of land tax for the entire 16 Acres, (assessment No. ZB-297), for the years 1967, 1968, 1974, 1979, 1981, 1982, 1985, 1986, 1990 and 1991 by Joseph Commissiong, and after his death the Intervenor paid land tax for the years 1992 and 1993.

74. The official receipts issued by the District Revenue Officer all establish that it was the Intervenor and her husband Joseph Commissiong, deceased, who paid the land taxes for those years, and not the Claimant's cousin Fitzroy Fortune.

Possessory title/ title by adverse possession

75. The Claimant claims to be the Legal Personal Representative of Emma Charles (paragraphs 4 and 6 of her Amended Statement of Case), of Queen Charles and of Queen Charles as Administratrix of the estate of Felix Charles. As Legal Personal Representative she would be a trustee holding the assets comprised in the respective estates – including the Five Acres owned by Emma Charles (devised to Emma Charles by Frances Cooper).

76. The Claimant's possessory title would therefore be based on adverse possession of trust property, of which the Claimant as Legal Personal Representative of Emma Charles, deceased, is trustee, **against other persons who might claim to be beneficially entitled under Emma's intestacy.**

77. In his judgment in **Walcott and Alleyne** (supra) the Honourable Hamel Smith J (as he then was) stated at page 4

“ADVERSE POSSESSION:

*The first issue is the question of “adverse possession”. The Plaintiff claimed that **in her representative capacity** she was entitled to possession of the property in question on the basis of having acquired a “possessory title” to the lands. I think that it is trite law that **an executrix cannot acquire such a title against the estate she represents or against the***

named beneficiary in the will. She is in fiduciary position by virtue of the will and her 'possession' cannot be adverse to those she represents."

An Administratrix is equally in a fiduciary position in relation to an estate she represents, and with respect to potential beneficiaries thereunder .

78. Further the Claimant did appreciate that the lands still vested in the estate Emma Charles, on behalf of which she was authorized to collect rent, because she so told the "tenants". The Claimant admits at paragraph 4 of her Amended Statement of Case "*that she informed the Defendants that all rents must be paid to the Claimant on behalf of the estate of Emma Charles deceased.*"

The Intervener's pleaded case

79. The Intervenor Jean Commissiong herself claims "the said lands" by adverse possession, though by *the said lands* she means a separate 6 acre parcel, which allegedly overlaps the said lands claimed by the claimant to the extent of 2 acres. She alleges, *inter alia*, that the Claimant obtained the said Certificate of Title by fraudulent means and that the Defendants Stanford Allyene (Third Defendant) and Jennifer & Nathaniel Fortune (Fourth Defendant) were the tenants of the said Joseph Commissiong,

80. The Intervenor further states in her Defence and Counterclaim, and in her Witness Statement, that she began living with Joseph Commissiong in **1967** on a parcel of land comprising Six Acres more or less, (the Intervenor's alleged lands), which he cultivated in sugar canes. A cane farmer's contract dated the 19th November, 1982 in the names of the said Joseph Commissiong and the Intervenor is exhibited. Also exhibited in the record of the sales of cane by the Intervenor and her son Funtoy Commissiong for the years 1996 to 2002 to Caroni [1975] Limited.

The documents

81. The Intervenor's own evidence is that the lands cultivated by the Intervenor and her deceased husband, were evidenced by the cane contract (**Contract No.65322**). That contract produced by the Intervenor was ".....For reaping during the years 19... to 1983

inclusive the farmer shall cultivate or caused to be cultivate in a husband-like manner canes of any of the following varieties to wit: 41227, and any new varieties which may be approved by the Manufacturer to the extent of Sixty-nine (69) tons per annum **on lands situate at Hindustan.....”**

82. This is the evidence before the Court of the lands farmed and occupied by the Intervenor. In that contract the address of the Intervener and Joseph Commissiong is stated to be 6th Company **Moruga**. If that were also the address of the land they farmed then it would probably have been so set out in that document. It is highly unlikely that “**Hindustan**” would be inserted in that document in error, or if it were, that it would remain uncorrected.

83. Any explanation that **Hindustan** referred to the location of the scale, and not the land where the canes were grown is contradicted by the abbreviation USM as the location of the scale on the record of the sales of cane. Clearly USM cannot be an abbreviation for Hindustan.

84. These contemporaneous documents are critical to the intervenor’s case. They do not support it. In fact they flatly contradict it.

The alleged tenancies

85. The Intervenor said that her husband rented out portion of the Intervenor’s land to Seven (7) tenants, including Stanford **Alleyne** and Jennifer **Fortune**. The Claimant filed the said HCA No. S 563 of 2004 on the 23rd March, 2004 against Claudius **Morris** and against Stanford **Alleyne** and Jennifer **Fortune** and also filed these proceedings on the 9th July, 2008.

86. The intervenor claims that with respect to the tenancies of those two defendants, the fact that they paid rent to her and Joseph Commissiong indicates that the intervenor and her husband were in control of the land occupied by the tenants.

87. However the Intervenor admitted in cross examination that neither she nor her deceased husband made any efforts to collect rents from any of their alleged tenants after the Claimant stopped them from paying rent.

88. Further she took no steps to collect such rents as would be legally due to them if they were in fact the owners of the disputed lands.

89. When the Claimant, in pursuance of her judgment, demolished the houses of persons who claimed they were the tenants of the Intervenor and her deceased husband, the intervenor took no steps. This suggests, (though it is not conclusive), that the Intervenor, stood by while houses of those persons who she claimed to be her tenants were demolished because these persons were not the tenants of her deceased husband. I note that the Intervenor claims that she did not do anything to assist the nine Defendants named in the 2004 proceedings because she did not know what to do, and only intervened in these proceedings because the Claimant interfered with her possession.

90. However those tenants have not paid her rent since 1986, and have long since ceased to recognize her or the deceased Joseph Commissiong as being their landlord. Therefore neither the cane contract nor the receipts for alleged rent from “tenants” support the intervenor’s claim to have been in occupation or possession or control of 6 acres of land, which allegedly includes part of the said land.

That is sufficient to dispose of the Intervenor’s claim based on occupation of 6 acres, of which 2 acres overlap the said lands. Her claim in this regard must be dismissed.

Conclusion

91. It is clear that the Claimant’s application to bring the said lands under the provisions of the *Ordinance* contained the material misrepresentations identified above, namely:-

- (a) The Claimant, who I have found to be an intelligent person with a keen appreciation of the intricacies relating to this land, must have known that her father Felix Charles possessed no realty at the date of his death, as the non disclosed

inventory to his estate would have clearly revealed. This negates the allegation that Emma Charles gave the Five Acres to Felix Charles.

- (b) The Claimant sought to trace her title to the said lands to the Five Acres of land demised to Emma Charles. She alleges that by operation of law, title became vested in her father Felix Charles, and by operation of law, it devolved to her mother Queen Charles and, upon the death of her mother, to her, (with the consent of her siblings to her acquiring their interests). This was not true.

In fact the Claimant also knew that Emma Charles had other children, namely, Felix Charles, Percy Charles and a daughter Doris, (as her witness Theresa Elliot so testified). Doris was alleged to be the mother of Joseph Commissiong. Title passed from Emma Charles to such of her children who survived her. The claimant attempted to mislead the Court by insisting that Emma Charles had only two sons namely, Felix Charles and Percy Charles. The said land therefore did not devolve to Felix, or thereafter to the claimant's mother Queen Charles, by operation of law.

- (c) The Claimant knew that the tenants were tenants of Joseph Commissiong and Samuel Cooper, and **misrepresented in her application that they were simply tenants**, in a successful attempt to mislead the Registrar General into believing that they were her tenants, instead of revealing that those persons claimed to have been put into possession by Commissiong and Cooper, to whom they paid rent. That would have immediately put the Registrar General upon inquiry that there were other persons asserting an interest in the said lands and the Certificate of Title would, or should, never have been issued in those circumstances.
- (d) The Claimant also knew that she ceased to live on the said lands in 1988 (-her two witnesses say so); and
- (e) The Claimant knew that the land taxes were not paid by Fitzroy Fortune . In fact it is a matter of public record that other persons paid the land tax, but this was not disclosed in the application, yet another matter which, if revealed, would have put the Registrar General upon inquiry.

Findings

92. I find as follows:-

(1) The Claimant was not **solely entitled** to the 5 Acres of land left by Emma Charles. **Emma Charles had other children** surviving her. The Claimant's father Felix Charles was one. Doris and Percy Charles were others.

(2) The application was in respect of 2.5028 hectares or 6.18 Acres (one hectare = 2.471 Acres). This is in excess of the 5 Acres parcel, allegedly given by Emma Charles to the Claimant's father Felix Charles, or which, (as pleaded) "devolved to Felix Charles by operation of law";

(3) Emma Charles did not give the said lands to Felix Charles. The inventory of the estate of Felix Charles, (signed and sworn to by the Claimant's mother as being correct), makes no mention of any lands whatsoever;

(4) The land taxes for the said lands were not paid by the Claimant, or her parents, or cousin Fitzroy Fortune. The attempt to suggest that they did so, in an attempt to suggest that this was consistent with the ownership of the claimant and her predecessors in title, is false and misleading. It is another matter which goes to the bona fides of the application. In fact, though payment of land taxes is in no way determinative of ownership, the official receipts show payment by Joseph Commissiong prior to the Claimant's application in 1992.

(5) There were "several tenants" on the said lands (paragraph 5 of affidavit sworn to on the 27th October, 1992). These tenants were not tenants of the Claimant or her predecessors. They were paying rent to Joseph Commissiong and Samuel Cooper, and the basis on which this was happening should have been investigated, rather than reliance on the claimant's disingenuous and misleading assertion that they were tenants. In fact, given the intent of this representation, and the substantial benefit she derived from it, and the other misrepresentations that she made, (including suppressing the potential interests of the other siblings of her father Felix), I find that this assertion was fraudulent.

(6) The Honourable Hamel Smith J as he then was, in the case of **Walcott v Alleyne** set aside the Certificate of Title granted because of the false allegation by the Defendant in that case, to whom was issued a Certificate of Title, that he was the “**owner of the fee simple in possession**” (page 8- paragraph 1) when he was not.

93. I find that

- a. the assertions by the claimant in this case that the said lands were **given** to her father Felix,
- b. her deliberate **failure to disclose** that her grandmother Emma had **other children** besides Felix and Percy, and
- c. her deliberate **non disclosure** that the tenants on the property were **not her tenants**, are dishonest and fraudulent actions.

94. They require the setting aside and cancellation of the Certificate of Title issued to her on the basis of those fraudulent representations, and a declaration is granted that the claimant’s Certificate of Title filed in Volume 3754 Folio 221 was obtained by fraud and it must be set aside.

95. Having set aside the Claimant’s Certificate of Title the Claimant’s claim against the Defendants is no longer maintainable.

96. Evidence was given of the destruction by the Claimant of one of the houses of Claudius Morris on one of his tenanted lots, and the purchase by him of the other. It is clear that these matters occurred on the claimant’s understanding that she was the owner of the said lands and based on her certificate of title.

97. That certificate of title must now be set aside on the ground of fraud. The claimant had no basis in law for asserting rights of ownership over the house of Claudius Morris, and accepting money from him for the purchase of land on the basis of that certificate of title.

Conclusion

98. I find as follows:-

1. The 5 Acres of land left by Emma Charles did not devolve by operation of law to Felix Charles. **Emma Charles had other children**, including the Claimant's father Felix Charles, Doris, and Percy Charles;
2. The application was in respect of 2.5028 hectares or 6.18 Acres (one hectare = 2.471 Acres). This is in excess of the 5 Acre parcel, allegedly given by Emma Charles to the Claimant's father Felix Charles, (according to the application), or which (as pleaded) "devolved to Felix Charles by operation of law";
3. Emma Charles did not **give** the said lands to Felix Charles. The inventory of the estate of Felix Charles (signed and sworn to by the Claimant's mother as being correct), makes no mention of any lands whatsoever;
4. The land taxes for the said lands were not paid by the Claimant, or her parents, or cousin Fitzroy Fortune. The attempt to suggest that they did so, in an attempt to suggest that this was consistent with the ownership of the claimant and her predecessors in title, is false and misleading. It is another matter which goes to the bona fides of the application;
5. There were "several **tenants**" on the said lands (paragraph 5 of affidavit sworn to on the 27th October, 1992), but these tenants were not tenants of the Claimant or her predecessors. They were paying rent to Joseph Commissiong and Samuel Cooper. The claimant did not reveal this at the time of her application. If this had been revealed, then the basis on which the tenants were paying rent to someone other than the claimant would have been investigated. The claimant's statement simply that there were tenants, on **affidavit** in the application, was disingenuous and misleading, and clearly intended to convey the impression, which it did, that they were her tenants.

6. In fact, given the intent of this representation, and the substantial benefit she derived from it, and the other misrepresentations that she made, (including suppressing the potential interests of the other siblings of her father Felix), I find that this assertion was fraudulent.
 - a. The claimant's certificate of title was obtained by fraud and it must be set aside.
 - b. The claimant's claim against the defendants fails and is dismissed.

Disposition and Orders

99.

- i. The claimant's claims against the defendants are dismissed.
- ii. An order is granted that the certificate of title in Volume 3754 Folio 221 be set aside on the ground that the said Certificate was obtained by fraud.
- iii. An order is granted that the Claimant do forthwith deliver up to the Registrar General the said Certificate of Title registered in Volume 3754 Folio 221 for cancellation, and in any event that the Registrar General do rectify his records accordingly to reflect such cancellation;
- iv. The intervenor's claim to a declaration that she has been in continuous adverse possession of a portion of the said lands fails, and is dismissed.
- v. An injunction is granted restraining the claimant whether by herself, her servants or agents from entering or remaining upon or interfering with the use and occupation of lands currently occupied by the Intervenor or the Defendants.

- vi. The claimant is to pay \$10,500.00 being $\frac{3}{4}$ of the Intervenor's costs in respect of the trial of this action. (A significant part of the trial was concerned with the claimant's certificate of title and the Intervenor has successfully challenged the bona fides of that certificate and established that it was fraudulently obtained.)

- vii. Liberty to apply.

Dated this 2nd day of November 2012.

.....
Peter A. Rajkumar
Judge

The court wishes to record its appreciation to counsel for the parties who provided comprehensive and thorough submissions from which much assistance was derived.