

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**CIVIL APPEAL P160 OF 2015**

**CV 2009-02918**

**BETWEEN**

**CONSTANCE WEBB**

**RUFINA WATSON**

**APPELLANTS/ CLAIMANTS**

**AND**

**KEVIN HENRY**

**RESPONDENT/ DEFENDANT**

**PANEL**

I. Archie CJ

C. Pemberton JA

A. des Vignes JA

Date delivered: April 28, 2020.

**Appearances:**

For the Appellants/Defendants: Mr S Marcus SC

For the Respondents/ Claimants: Mr F Masaisai instructed by Ms J Farah-Tull

I have read the Decision of Pemberton J.A. I agree with it and have nothing to add.

/s/I Archie CJ

I have read the Decision of Pemberton J.A. I agree with it and have nothing to add.

/s/A des Vignes JA

## JUDGMENT

### INTRODUCTION

1. This case really involves the ability of a paper titleholder to sue for rents or recovery of possession of premises. The existence of a tenancy is immaterial in the purest sense, although this issue is discussed in this judgment. The relevant laws are **sections 3, 22** and *en passant* **section 9** of the **Real Property Limitation Act (RPLA)**.<sup>1</sup>

### SUMMARY OF DECISION

2. The trial judge misapplied the law by finding that Mabel's tenancy was determined by the effluxion of time since there was no evidence that there was a defined start and end date. Further, the trial judge found that time ran against the paper titleholder from Kevin's entry onto the land in 1985. We disagree with this finding since at that date he was a minor and as such could not hold any interest in land in his own right. For the record, we find that his possession would have commenced in 1988, when he attained the age of majority.
3. However, were those points in issue sufficient to taint what was an otherwise well-reasoned judgment, setting out the findings, assessment of facts and conclusions arrived at by the trial judge? We do not think so. A close look at the evidence reveals that the findings of fact and application of the relevant law made by the trial judge,

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<sup>1</sup> Chapter 56:03

save for those referred to above, were consistent with the facts pleaded and evidence led and tested, namely that,

By the time that title passed to Constance and Rufina, and indeed by the time this action was filed, any interest or title held by Annisette's Estate was extinguished.

That conclusion was unassailed by both Counsel and the Court. The appeal is therefore dismissed.

## **FACTS**

4. The facts were well set out in the trial judge's judgment but to provide context, a brief synopsis of the facts appears below.
  
5. This dispute centers on a parcel of land that belonged to Annisette Mitchell (Annisette) situate at Vanderpool Lane, Diego Martin (the 'disputed parcel of land'). Annisette had one daughter Julia Mitchell (Julia). Around 1954, Annisette rented the land to Mabel Honoré (Mabel) and her husband. The couple built a small house and lived there together until the husband died. After her husband's death, Mabel paid rent to Annisette. Annisette died intestate in 1964 and her daughter Julia died intestate in 1967. There is no evidence that Mabel continued to pay rent after Annisette died.
  
6. Kevin Henry (Kevin), the Respondent, was born on December 12 1970 and lived with Mabel from infancy. Mabel died in April 1981. When she died, Kevin was 10 years old. After Mabel's death, a neighbor, Priscilla Joseph (Priscilla), took Kevin in, and he lived with her for four (4) years. In 1985, at the age of 15, Kevin moved back to the disputed parcel of land and occupied the house that Mabel and her husband built.
  
7. Constance Webb and Rufina Watson (Constance and Rufina), the Appellants, were related to Annisette although they were not direct heirs. They contend that Kevin moved back to the disputed parcel of land in 1989. Subsequently, Constance and Rufina applied for a waiver of State Rights pursuant to **section 27 of the**

**Administration of Estates Act.**<sup>2</sup> On January 27 2006, the Attorney General issued a Warrant of Authority, which authorized the Administrator General to transfer the disputed parcel of land to Constance and Rufina. On February 23 2007, pursuant to that Warrant of Authority signed by the Attorney General, the Administrator General purportedly transferred title to the disputed parcel of land to Constance and Rufina to hold in fee simple as tenants in common.

8. Thereafter, Constance and Rufina retained an Attorney at Law. By letter dated December 1 2007, Constance and Rufina through their Attorney-at-Law gave to Kevin a notice to quit and deliver up the disputed parcel of land on or before January 31 2008. In that letter, it was also asserted that, Constance and Rufina, 'were responsible for maintaining the property over the years...'. Despite this, Kevin continued in undisturbed occupation of the disputed parcel of land up to the filing of the High Court action on August 12 2009.

#### **SUMMARY OF THE TRIAL JUDGE'S FINDINGS**

9. Constance and Rufina bore the burden of establishing proof of title and the *locus standi* to bring the action. They testified that prior to her death Annisette and her daughter lived with their family. They were unable to supply evidence that could shed light on the terms of Mabel's tenancy. They were also unable to provide evidence that proved that Mabel paid rent to their mother after Annisette's death. The only evidence in relation thereto was Rufina's recollection that when she was a child, Mabel paid rent to her mother. Rufina's evidence lacked specificity regarding the amount paid and when pressed under-cross examination she could not explain how she came by that knowledge. Constance and Rufina did not provide convincing evidence establishing that they asserted ownership over the disputed parcel of land either by maintaining its physical appearance or by paying land and building taxes. They did not have independent access to the land. In contrast, Kevin provided documentary evidence of his source of income that allowed him to support himself

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<sup>2</sup> Chapter 9:01

at the age of 15. He also provided evidence of utility bills for the disputed parcel of land in his own name. In addition, Kevin gave evidence of doing electrical wiring and changing the entire roof. He had no receipts and could not recall how much money he spent on these exercises. Kevin had the only keys to the property as well.

10. As a result, the trial judge rejected Constance's and Rufina's evidence and made the following findings of fact:

- i. Constance and Rufina never lived on the disputed piece of land;
- ii. Constance and Rufina failed to prove that Mabel paid rent to their mother after Annisette died;
- iii. On a balance of probabilities, it is more likely than not that Kevin moved back onto the disputed parcel of land in 1985 and not 1989 as was contended;
- iv. Constance and Rufina failed to prove that they paid land taxes or maintained the property;
- v. Kevin occupied the disputed property undisturbed for a period of 24 years- starting in 1985 and ending in 2009 at the filing of the High Court action.

11. With regard to the legal arguments raised by Counsel at trial, the trial judge made the following findings on the law:

- i. On Annisette's death, her interest in the disputed parcel of land devolved on the Administrator General who then held the disputed property on a bare trust for the beneficiaries of the Letters of Administration. By 2005, the Administrator General received Constance's and Rufina's application for Waiver of State rights in their favour to Annestine's estate. In an effort to grant that application, the Administrator General applied for and obtained Letters of Administration. Thereafter, the Administrator General laid Constance's and Rufina's application for Waiver of State Rights before the Attorney General. During that time, that is, the time between Annestine's death and the grant of the Waiver and subsequent Deed of Assent, the Administrator General held the property *in medio*. At no time did the disputed parcel of land become State Land.

- ii. Kevin’s continuous and undisturbed exclusive possession extinguished the title originally held by Anisette and therefore he was entitled to the disputed parcel of land by adverse possession.
- iii. It was not open to Counsel for Constance and Rufina to rely on the protection afforded by the **Land Tenants (Security of Tenure) Act (LTSTA)**<sup>3</sup> since none of the parties pleaded that Mabel became a statutory tenant by virtue of this **LTSTA**. In any event, the **LTSTA** is irrelevant to these proceedings since Mabel’s Estate was not the holder of a subsisting tenancy at the date<sup>4</sup> on which the **LTSTA** came into force. Any tenancy, be it month to month or year to year, by 1981 would have been determined by the effluxion of time.<sup>5</sup>

## **THE APPEAL**

### **ROLE OF THE APPEAL COURT**

12. From the learning advanced by the Privy Council in **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd**<sup>6</sup> and **Bahamasair Holdings Ltd v Messier Dowty Inc.**,<sup>7</sup> any court acting in its appellate jurisdiction has *‘to be extremely cautious about upsetting a conclusion of primary fact’*.<sup>8</sup> The appellate court must be satisfied that the trial judge was plainly wrong in his or her assessment of the totality of the evidence and the application of the relevant law.
13. As has already been stated, there was no suggestion in the Record of Appeal-pleadings or evidence- that the trial judge’s findings of fact were plainly wrong. However, we do find it necessary to clarify the matters of law where the trial judge erred.

### **GROUND OF APPEAL**

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<sup>3</sup> Chapter 59:54

<sup>4</sup> June 1 1981

<sup>5</sup> See [73] of the trial judge’s Reasons

<sup>6</sup> [2014] UKPC 21

<sup>7</sup> [2018] UKPC 25

<sup>8</sup> Bahamasair, [36]

14. The Notice of Appeal contained several grounds of appeal that Counsel addressed in submissions.

***Written Submissions filed on behalf of Constance and Rufina***

15. Mr Marcus SC, Counsel for Constance and Rufina submitted that the trial judge erred by finding that the **LTSTA** did not apply to the facts of the case since no party on either side pleaded that Mabel became a statutory tenant by virtue of the **LTSTA**. Counsel asserted that the **LTSTA** was applicable because matters of law do not have to be pleaded. Relying on **Vandervell's Trusts (No.2)**,<sup>9</sup> he further asserted that although Constance and Rufina did not plead that Mabel's tenancy was statutory in nature, they did plead facts in support of this assertion.

16. Mr Marcus SC also submitted that the trial judge erred in finding that Mabel's tenancy ended before her death. He asserted that because Mabel's tenancy was a statutory tenancy, it could not determine by the effluxion of time. Counsel also asserted that in the absence of evidence to that effect, and pursuant to **section 10(4) of the Administration of Estates Act** on Mabel's death her tenancy fell to her Estate. Therefore, on June 1 1981, it became a statutory tenancy for a term of 30 years pursuant to the **LTSTA**. Relying on **Fairweather v St Marylebone Property Co Ltd**,<sup>10</sup> Counsel also submitted that the trial judge failed to find that when a tenancy is determined, it is the interests of the tenant that is extinguished and not the title of the owner. Counsel also argued that Kevin failed to establish *animus possidendi*.

***Written Submission filed on Kevin's Behalf***

17. Mr Masaisai, Counsel for Kevin, submitted that Constance and Rufina's pleaded case failed to establish the elements for an actionable cause of action under the **LTSTA**. Counsel asserted that the **LTSTA** could not apply since Mabel died before the **LTSTA** came into force. Counsel argued that Constance and Rufina failed to establish that Mabel was a tenant as at June 1 1981, the date on which the **LTSTA** took effect. He also argued that Mabel's tenancy did not devolve to the Administrator General on her

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<sup>9</sup> [1974] 3 All ER 205 cited by the Court in *Persad v John* HC 1809/1981

<sup>10</sup> [1963] AC 510

death and further that on the face of the application for Grant of Letters of Administration filed by the Administrator General, Mabel's tenancy did not form part of Annisette's Estate.

18. Mr Masaisai also submitted that when **JA Pye (Oxford) Ltd and Anor v Graham and Anor**,<sup>11</sup> is applied to the facts of this case, Kevin established a sufficient degree of physical custody of and control over the disputed parcel of land, and an intention to exercise such custody and control on his own behalf and for his own benefit. Counsel asserted that Kevin was not required to demonstrate a conscious intention to exclude the proper title owner or to take away the land from the paper titleholder.

***Oral Submissions made at the Hearing***

19. When the matter came up for hearing, the oral arguments of both Counsel centered on the applicability of the **Rent Restriction Act (RRA)**,<sup>12</sup> whether Mabel's tenancy survived her death to be captured by the **LTSTA** and the effect of the Warrant of Authority on Constance and Rufina's standing to maintain an action for possession against the backdrop of the **RPLA**.
20. Mr Marcus' rather attractive argument focused almost exclusively on the entwined effect that the **RRA** and the **LTSTA** had on Mabel's tenancy. Counsel argued that Mabel was the beneficiary of a statutory tenancy under the **RRA**. That tenancy, according to Counsel, survived her demise and remained intact. The **LTSTA** therefore captured the tenancy, thereby converting it on June 1 1981 to a statutory tenancy of 30 years. Counsel contended that Mabel's statutory tenancy was unaffected by Kevin's presence on the property. Counsel argued that upon Mabel's death her tenancy devolved to her successor. This Court noted that Mabel had no successor and asked to whom would such a tenancy have devolved in the circumstances. Counsel could not assist in this regard.

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<sup>11</sup> [2002] UKHL 30; [2003] 1 AC 419

<sup>12</sup> Chapter 59:50 (first enacted as Chapter 27:18)



21. Mr Masaisai, Counsel for Kevin, relied on the finding by the trial judge that by the time Mabel died her tenancy had already been determined by the effluxion of time. Counsel submitted that after Annisette's death in 1964, Mabel stopped paying rent and her tenancy ended. As a result, her continued (undisturbed) occupation became adverse to the interests of Annisette's Estate and extinguished any interest or title held by Annisette's Estate in 1980.<sup>13</sup> Counsel asserted that Mabel stepped into Annisette's shoes obtaining title by adverse possession. By the time that Kevin moved on to the property, the interest held by Annisette's Estate had been extinguished. So that although the Administrator General conveyed the paper title to Constance and Rufina in 2007, title was already extinguished and there was, in effect, nothing to convey.
22. Counsel also submitted that because Mabel's tenancy ended in 1964, although it may have been protected by the **RRA**, it certainly did not survive her death in April 1981 and could not be converted to a statutory tenancy by the **LTSTA**. Counsel also asserted that Kevin's undisturbed occupation from 1989<sup>14</sup> was adverse to any interest or title that may have been held by Mabel's Estate. Kevin therefore obtained title by adverse possession in 2005.

## **DISCUSSION**

### **LAW**

#### **RPLA - SECTIONS 3, 4(b), AND 22**

23. As we see it, the key sections that are applicable are **sections 3, 4, and 22 of the RPLA**. **Section 3 of the RPLA** empowers a paper titleholder to bring an action to recover land or rent within sixteen (16) years from the date on which the right to bring such an action accrues. According to **Section 4(b)**, if titleholders continued to receive rent up until their death, the right to bring an action through the estate of the deceased titleholder accrues on the date of the titleholders' death. **Section 22 of the RPLA** provides that if the person entitled to do so, brings no action, the right and title of

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<sup>13</sup> Sixteen (16) years after Annisette's death.

<sup>14</sup> Although the trial judge found, that it was possible that Kevin moved in 1985, his actions had no legal effect prior to him becoming an adult in 1988.

that person is extinguished at the end of the limitation period of sixteen (16) years. Having said that, we are mindful that **section 22** does not confer title, possessory or otherwise on any person found to be in adverse possession or in whose favour time ran.

## **ISSUES**

24. The issues arising on appeal are therefore whether,
- a. Mabel's tenancy survived her death and was thereafter converted into a statutory tenancy under the **LTSTA**;
  - b. Kevin established adverse possession in his own right as against Annisette, the paper title owner; and
  - c. Annisette's title to the property was extinguished by the time this action was filed by the operation of the **RPLA**.

## **ANALYSIS & CONCLUSION**

### ***Whether Mabel's tenancy survived her death and was converted thereafter to a statutory tenancy under the LTSTA?***

25. In this case, Annisette rented land to Mabel and her husband. When Mabel's husband died, his tenancy survived his death, passing to Mabel. After he died Mabel continued to pay rent to Annisette up to Annisette's death. There was much ado about whether the tenancy subsisted after Mabel's death. If so, then the provisions of the **LTSTA** would apply. The question is, was there a valid and subsisting tenancy, which could have formed part of Mabel's Estate as at the date of her death in April 1981. The trial judge found as a matter of fact and law that there was no valid and subsisting tenancy as at, June 1 1981, the operative date of the **LTSTA**.

26. Prior to the enactment of the **LTSTA**, the **RRA** governed and protected land tenancies. According to **section 2 of the RRA**, a 'tenant' included the widow of a tenant or, if there was no widow, any of the tenant's family members who lived with **him** for at least six (6) months prior to **his** death. Therefore, **section 2 of the RRA** specifically provided for how tenancies were to devolve on the death of a tenant. In the case of a man, the tenancy devolved to his widow who resided with him at the time of his

death. If the tenant was a woman, the tenancy did not devolve at her death but instead ended. The enactment of the **LTSTA** changed all of this as of its operative date, June 1 1981. However, by that time, Mabel was already deceased and since she was a surviving widow at the date of her death, her tenancy did not survive and so could not form part of her Estate. Therefore, the effect of Mabel's death in April 1981 was that her tenancy ended. The **LTSTA** could not be used to convert her tenancy to a statutory tenancy of thirty (30) years since by the time the **LTSTA** came into force there was no subsisting tenancy. The **RRA** and **LTSTA** are therefore irrelevant to the determination of this appeal. We therefore agree with the trial judge and find that her conclusions regarding the inapplicability of the **RRA** and **LTSTA** were not plainly wrong, but were in fact correct. We therefore disagree with Mr Marcus SC on this issue.

***Whether Kevin established adverse possession in his own right as against Annisette, the paper titleholder?***

27. At the oral hearing, Mr Marcus SC asserted that Kevin's occupation of the disputed property was subject to a statutory lease, which arose by virtue of Mabel's tenancy.

28. Mr Masaisai contended that Kevin's undisturbed occupation from 1985<sup>15</sup> was adverse to any interest or title that may have been held by Mabel's Estate. Kevin therefore obtained title by adverse possession prior to Constance and Rufina obtaining a Grant of Letters of Administration in 2005.

29. As has already been established, pursuant to **sections 4(b) and 22 of the RPLA**, any title or right to bring an action which could be brought by Annisette's Estate was extinguished in 1980, sixteen (16) years after Annisette's death- not by adverse possession but by the operation of these **RPLA** provisions. Therefore, although Constance and Rufina obtained paper title in 2007, the rights vesting therein were by that time already extinguished. Further, Mabel's death ended any tenancy that may have subsisted prior thereto. On Mabel's death in 1981, her tenancy under the **RRA**

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<sup>15</sup> Although the trial judge found that, it was possible that Kevin moved in 1985, his actions had no legal effect prior to him becoming an adult in 1988.

expired and was not converted to a statutory tenancy of 30 years, nor did it vest in her Estate.

30. The trial judge found that Kevin was able to establish exclusive possession. He presented T&TEC and WASA bills issued in his name and no person could enter onto the disputed parcel of land without his consent. Conversely, Constance and Rufina were unable to prove that they maintained the disputed parcel of land or that they asserted any ownership over it by paying land and building taxes, for example.
  
31. At the hearing, Mr Masaisai argued that when Kevin went into possession of the disputed parcel of land in 1985, he acquired adverse possession through Mabel. However, on the facts, Kevin established his own period of adverse possession from 1988, the year he turned 18. Kevin's unlawful entry and exclusive, undisturbed possession were separate and apart from Mabel's occupation. When Kevin went into possession, he was not a tenant. He was a trespasser. Therefore, time began to run for his purposes and in his own right from 1988 and the period of limitation expired in 2004.

***Whether Annisette's title to the property was extinguished by the operation of the RPLA by the time this action was filed?***

32. Mr Masaisai held firmly to the view that because Mabel's (undisturbed) occupation became adverse to the interests of Annisette's Estate, Mabel stepped into the shoes of Annisette's Estate thereby obtaining title by adverse possession. This is clearly not the position. There is no evidence of the last date that any person entitled to collect rents did so from Mabel. The evidence does not establish that Mabel held over as a tenant at will after Annisette died (on November 28 1964). In any event, by operation of the **RRA** Mabel's tenancy expired in April 1981 at the date of her death. Therefore, Kevin could not step into Mabel's shoes to continue the period of uninterrupted possession. He could not claim anything in relation to Mabel. We therefore disagree with the trial judge that Mabel's tenancy determined by effluxion of time. The tenancy determined when she died in April 1981, by operation of the **RRA**.

33. When Annisette died intestate and her daughter Julia survived her. Annisette's real estate therefore vested in the Administrator General. <sup>16</sup>Julia eventually died intestate without administering her mother's estate. At Julia's death, her real estate or any interest which she would have held in real estate became vested as well in the Administrator General. In fact, after Julia's death, both of their real estate vested in the Administrator General. Since there was no application for Grants of Letters of Administration in either of the Deceased ladies' estates, the property in its entirety passed to the Administrator General, *bona vacantia*. The Administrator General therefore held both Annisette's and Julia's estates on trust as a bare trustee and had no power to deal with the land *per se*. According to Wooding CJ in **Arthur v Gomes**,<sup>17</sup> the Administrator General is '*merely a depository, so to speak, holding things in medio until such time as a grant is obtained. The title at law remains in vacuo pending the grant*'.<sup>18</sup> Therefore, the Administrator General derived a bare title from the Grant of Letters of Administration.

34. How did the operation of the **RPLA** affect Annisette's Estate? **Section 3 of the RPLA** provides that an action for possession or rent must be brought within sixteen years from the date on which the right to bring an action accrues. In **Rampersad v Dwarka and Ors**,<sup>19</sup> the Court recognised that a person claiming title through paper must have some evidence of that title- a deed- in order to sustain an action. Time continues to run until someone takes a step to assert those rights. Although we agree with the trial judge that any right belonging to Annisette's estate to bring an action was extinguished by the time that the action was brought, we make this finding for different reasons.

35. **Section 22 of the RPLA** provides that title and the right to bring an action for possession expires sixteen (16) years from the date on which the right to bring such an action first accrued. Time began to run against Annisette's Estate from the date of Annisette's death in 1964. There is no evidence that any person claiming through her

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<sup>16</sup> See Section 4 of the Administration of Estates Act

<sup>17</sup> (1966) 11 WIR 25

<sup>18</sup> *ibid*, pp 28-29

<sup>19</sup> CA Civ S077 & S079/2015

took any steps to assert title over the disputed parcel of land prior to the expiration of the limitation period. Therefore, time continued to run and Annisette's title and right to bring an action, vested in her Estate, had extinguished in 1980. We note that at trial, Constance and Rufina did not explain their own delay in bringing an action for recovery of the disputed parcel of land.

### **CONCLUSION**

36. Therefore, by 2005, the time of the Grant of Letters of Administration to the Administrator General, there was no right or title left to distribute to any person who could have benefited under such Grant. It is also clear therefore, that by 2007, there was no legal title that could have passed from the Administrator General to Constance and Rufina under the Warrant of Authority and the Deed of Transfer. Therefore, Constance and Rufina had no *locus standi* to bring this action against Kevin. Kevin has successfully resisted the claim. We therefore agree with the trial judge.

### **ORDER**

It is hereby ordered that:

- (1) This appeal is dismissed.
- (2) The trial judge's Decision and Order dated June 5 2015 are upheld and affirmed.
- (3) Costs of the Appeal to be paid by the Appellants to the Respondent to be assessed if not agreed.
  - a. Should the parties agree on the costs to be paid, they shall inform the Court within seven days of the date of receipt of this Order.
  - b. Should the parties not agree on the costs to be paid and the Court hearings remain suspended due to the Covid-19 Pandemic, the Respondent shall file and serve his statement of costs within seven days of the date above.
  - c. The Appellants shall file and serve any responses seven days thereafter.
  - d. The Court shall give its decision on costs within seven days of the receipt of the submissions of the Appellants.

/s/C Pemberton JA