TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. No: 2009-02918

BETWEEN

CONSTANCE WEBB	First Claimant
RUFINA WATSON	Second Claimant

AND

KEVIN HENRY	Defendant

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Stanley I. Marcus S.C. and Ms. Turkessa Blade, Attorneys-at-Law for the Claimants.

Mr. Amita Goberdhan and Mr. Farai Hove Masaisai, Attorneys-at-Law for the Defendant.

JUDGMENT

Introduction

1. These proceedings concern KJ LNAI ECAO PDA ECL PA LNKLANU [1] situated on Vanderpool Lane, Diego Martin, more particularly described in the Fixed Date Claim Form filed herein

[1] ALL AND SINGULAR, that certain piece or parcel of land situate at Vanderpool Lane, Sierra Leone Village in the ward of Diego Martin in the Island of Trinidad in the Republic of Trinidad and Tobago comprising approximately One Thousand One Hundred and eighty point one square meters (1180.1m$^{2)}$ and abutting on the North upon lands formerly of Madelaine Joseph and then of Salvatori Scott and Company but now by a drain reserved on the South upon lands formerly of Mathurin François then of Dr. Samuel Juwaran but now of Vanderpool Lane on the east upon lands now or lately of Louisa Phillips now of Priscilla Joseph and on the West upon lands formerly of Leontine Vanderpool now on lands partly owned by Mr. Lashley and partly owned by Joan Noray together with the building thereon which said piece or parcel of land is described in Deed registered as No. 5291 of 1994 which parcel of land is known and assessed as No. 1251 Vanderpool Lane, Diego Martin.

on the 12th August, 2009. The claimants became entitled to the freehold interest in the disputed property by virtue of a Warrant of Authority under the hand of the Attorney General and a Deed of Conveyance executed by the Administrator General.

2. The defendant contends, by way of defence, that he had occupied the disputed property undisturbed for a period in excess of that required by the ***Real Property Limitation Act***[2]**.**

3. In answer, it was contended on behalf of the claimants that there had arisen a statutory tenancy under the ***Land Tenants (Security of Tenure) Act***[3] in respect of the disputed premises.

4. In this judgment, the Court considered whether the defendant had succeeded in extinguishing the title of those entitled to the disputed property. The Court also considered whether there existed a statutory tenancy and whether the existence of such a tenancy would have operated against the extinguishment of the rights of those entitled to the land.

Procedural History

5. By their fixed date claim form filed on the 12th August, 2009, the claimants applied for an order for possession against the defendant.

6. The claim was supported by the joint affidavit of the claimants. When this matter came up for case management, on the 15th October, 2009, the Court directed that the claimants file and serve their statement of case on or before the 16th November, 2009, that the defendant file and serve his defence on or before the 18th December, 2009, and that the claimant file

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[2] Real Property Limitation Act Ch. 56:03
[3] Land Tenants (Security of Tenure) Act Ch. 59:54

and serve a Reply on or before the 18th January, 2010. The Court then gave standard pre-trial directions.

7. The trial was delayed by the request of the parties to negotiate an amicable settlement. There were also a variety of requests for extensions of time, the change of attorneys on both sides and the hearing and determination by the Court of a matter of national importance.[4]

8. The trial was eventually heard on the 6th January, 2014. Thereafter the Court gave directions for filing of written submissions. Extensions of time were granted for the filing of written submissions and judgment was eventually reserved on the 7th September, 2014.

9. At the trial, learned Senior Counsel, Mr. Marcus presented submissions in support of a Notice of Application filed on the 11th December, 2013. By this Notice of Application the HEI JPOCK CDPEDA K NPOLANI EOOKJ EK BEHA OLLHAI AJP HS EJ AOOOPPAI AJP EKNEDA purpose of placing into evidence a copy of a Rent Assessment Notice.

10. Having heard arguments for both parties, I refused the application. In summary, my reason for so doing was that, if successful, the application would have the effect of severely retarding the progress of the trial.

Facts

11. The claimants, Constance Webb and Rufina Watson are sisters. Their mother was Attice Watson and their grandfather was Leontine Vanderpool. The Vanderpool family owned many properties along Vanderpool Lane, Diego Martin.

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[4] Section 34 applications

12. The claimants as children, lived at the family home, which was a property located at the corner of Vanderpool Lane and the Diego Martin Main Road[5]. It was the contention of the second claimant, Rufina Watson, that she lived at the family home at the corner of Diego) NPEJ) EJ . K J 2 J ANLKKH J ABKNI KOPKBDANHEBA KNEJCEK) O3 PUKJ O testimony, she had lived away from the family home on two occasions: the first being the years between 1967 and 1982, when she lived in the USA and the second being, the years between 1990 and 1995 when she lived at Carenage.

13. The first claimant, Constance Webb told the Court, under cross-examination, that she had lived at the family home with her mother and siblings from 1949 until 1970. Ms. Webb told the Court that she got married in 1971 and moved out. Thereafter she lived with her own family in Belmont until 1991. She lived in La Horquetta for one year and returned to the family home in Diego Martin from 1992. Neither claimant ever lived at the disputed property.

14. On the left side of Vanderpool Lane, there stands the disputed parcel of land. This parcel of land had been owned by Annisette Mitchell who was related to the Vanderpools. Ms. Mitchell had one daughter, Julia. They lived together with the family of the claimants. The defendant denied that Ms. Mitchell ever lived with the Vanderpools. The claimants, however have provided direct evidence, which the defendant rebutted with no more than a statement that to the best of his knowledge Ms. Mitchell never lived with the claimants. The Court is therefore prepared to accept the testimony of the claimants that Ms. Mitchell and Julia lived at the family home with the claimants, their parents and siblings.

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[5] 0DABI EHUDKI A

15. Ms. Mitchell rented the disputed parcel to Mabel Honoré, who built a small house on it and lived there with her husband. Ms Mitchell died intestate in 1964 and Julia also died intestate in 1967. The claimants contended that thereafter, Ms. Honoré paid rent to their mother. The only evidence of this came from the second claimant who said that she was present when her mother received rental payments. The claimants failed to provide particulars as to how much rent was paid or in what capacity their mother received payments. The claimants also failed to produce any proof of payments of rent to their mother. Their mother died however, in 1991. The second claimant, Ms. Watson, stated that since 1989, there was no payment of rent.

16. Between the years 1964, when Ms. Mitchell died and 1989, the only evidence of rental payments was the recollection of the second claimant as to a payment made by Ms. Honoré to her mother. In my view, it is dangerous to rely on such tenuous evidence because, in substance, it is the recollection of the second claimant of what occurred half a century ago, when she was a child. The second claimant has not specified how many payments were made, at what intervals, whether a receipt was issued by her mother and indeed whether the payment was in fact a payment of rent and if so, how the claimant came by that knowledge. Accordingly, it is my view that this evidence ought to be rejected as unreliable.

17. The defendant was born on the 12th December, 1970. Mabel Honoré took care of him when he was a baby and brought him up as her own son. She was childless. She died in 1981 when the defendant was thirteen (13) years old. The defendant was then taken in by a neighbour, Priscilla Joseph.

18. PS OFDA ABAI JPO OAFD PDAOLAIPEK N(4) years at the home of Priscilla Joseph and that, in or about the year 1985, he returned to the disputed parcel of land and lived there, undisturbed, until the present time.

19. On the other hand, the claimants contended that the defendant continued to live at the home of Priscilla Joseph and that in 1989, the defendant moved back on to the disputed parcel and began conducting renovation works.

20. It was the claimants OAFD P, when they noticed that the defendant had re-entered the land, they complained to the Town and Country Planning Division and caused a letter of Maria Wilson, attorney-at-law to be sent to the defendant. The defendant attempted to pay rent to the claimants, who refused to accept it and sent it back. Thereafter, the defendant continued to occupy the property until the commencement of these proceedings.

21. A dispute of fact arises as to whether the defendant occupied the property from 1985 or 1989. In resolving this issue of fact, I considered that the defendant was unshaken in his evidence under cross-examination. He was able to itemise the particular activities of his life. He also supported his evidence by documentary evidence including a certificate of attendance from the Mucurapo Senior Comprehensive School from 1986 to 1988 as well as a letter dated the 6th March, 1995 from Hi-Lo Food Stores to prove that he had worked at Hi-Lo 3 KK NKKG 0DA ABAI JPO evidence suggests that he retained a very detailed memory of the time in question. His specific evidence is to be contrasted with the testimony of the claimants who stated FD PFDA ABAI JPONA-entry onto the premises came to their attention in 1989. Even if I accept their testimony in this regard, there is a real likelihood that the defendant may have moved into the disputed property without the knowledge of the claimants.

22. Some sixteen (16) years later, the claimants applied for a Grant of Letters of Administration in respect of the estate of Annisette Mitchell. In fact, Letters of Administration of the estate of Annisette Mitchell had been granted to the Administrator since the 5th August, 2005[6].

23. On the 23rd February, 2007, pursuant to a Warrant of Authority signed by the Attorney General on the 27th January, 2006, the Administrator General executed a Deed of Conveyance[7], transferring the disputed property to the claimants to hold the same in Fee Simple as Tenants in Common.

24. Thereafter, the claimants retained attorney-at-law, Garvin Simonette to write to the defendant. The letter of Mr. Simonette was dated the 1st December, 2007. Mr. Simonette wrote that he had been instructed that his clients were:

> *"responsible for maintaining the property over the years, that they trimmed the mango tree and generally maintained the surroundings…"*

25. Mr. Simonette called upon the defendant to quit and deliver up possession of the premises by 31st January, 2008. The defendant nonetheless continued in occupation.

26. The defendant denied that the claimants entered the premises to do maintenance works, and in this regard an issue of fact arises for my consideration.

27. In resolving this issue of fact, I was mindful that the claimants carried the burden of proving that they paid land taxes and maintained the property. The claimants have failed altogether to produce any documentary evidence to support their contention. Under cross-

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[6] GranPKB APPANOKB I EJ ECPN PEKJ I NGA J ATDE EPA PKPDAS EPJ AOOOP PAI AJPKBPDA HEI JP
[7] DE 200700471314

examination, Ms. Watson stated that she had land tax receipts, even if they were not before the Court. She also admitted that she had no keys for the disputed property.

28. The claimants failed to indicate the means by which they maintained the property and trimmed trees. They have not indicated whether they physically carried out the works themselves, whether they received gratuitous assistance from anyone or whether they relied on hired help. If in fact they relied on hired help, they have failed to produce even one receipt to prove that they had made any payment.

29. It was accepted by the claimants that the defendant lived on the disputed property undisturbed at least from 1989 up to the filing of this action on the 12th August, 2009. He paid electricity and water bills, which were sent to him in his name.

Submissions and Law

30. Parties relied on the written submissions of their attorneys-at-law. 0DA ABAI JPO HKOEC submission was filed on the 22nd January, 2014, the claimants closing submission was filed on the 21st April, 2014 and the defendant filed submissions in reply on the 27th May, 2014. Following the filing of closing submissions, learned Senior Counsel for the claimant OK CDP EDA K NPO LAN EOOEKJ HK BEEA O I EOOEKJ KJ EDA ***Land Tenants (Security of Tenure) Act***.[8] He did so on the 19th September, 2014 and the defendant responded by a further closing submission filed on the 22nd September, 2014.

31. Mr. Hove-Masaisai, learned attorney-at-law for the defendant argued that the single issue which arose in these proceedings was whether the defendant had become entitled to the land by adverse possession.

[8] Land Tenants (Security of Tenure) Act Ch. 59:54

32. Mr. Marcus, learned Senior Counsel for the claimants submitted that a statutory tenancy had been created in favour of the late Mabel Honoré under ***the Land Tenants (Security of Tenure) Act*** Ch. 59:54. Learned Senior argued further that assuming the defendant had occupied the land undisturbed for a continuous period of sixteen (16) years, the effect would be that he extinguished the rights which Mabel Honoré held as a statutory tenant. According to the argument of learned Senior, the defendant could not, while the tenancy was subsisting, extinguish the rights of persons who were entitled to the freehold interest which would remain after the end of the tenancy.

33. Mr. Marcus argued further that the freehold interest in the land was invested in the State and that the defendant had failed to establish occupation for a period of thirty (30) years, as required by the ***Crown Suits Limitation Ordinance***[9] (renamed the ***State Suits Limitations Ordinance***) as amended[10].

34. The defendant argued in response that the issue as to whether a statutory tenancy, existed would be inapplicable since Mabel Honoré died before the inception of ***the Land Tenants (Security of Tenure Act)*** Ch.59:54.

Law

35. ***Section 3 of the Real Property Limitation Act, Chapter 56:03***

> *"3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or bring such action, shall have first*

[9] Crown Suits Limitation Ordinance Ch. 5 No. 2
[10] Crown Suits Limitation Ordinance renamed State Suits Limitation Ordinance, and amended by the Law Reform Property Act No. 51 of 1976

accrued to some person through whom he claims, or if such right shall have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bring the same."

36. ***Section 4 of the Real Property Limitation Act, Chapter 56:03***

> *"4 (a) ...when the person claiming such land or rent, or some person through whom he claims, shall in respect of the estate or interest claimed, have been in possession or receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such rights shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;"*

37. ***Section 22 of the Real Property Limitation Act, Chapter 56:03***

> *"22. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished."*

38. In ***JA Pye (Oxford) v. Graham***[11], Lord Browne-Wilkinson indentified the two elements of possession as being:

[11] JA Pye (Oxford) v. Graham [2003] 1AC 419

"(1) a sufficient degree of physical custody and control, and,

(2) an intention to exercise such custody and control on one's own behalf and for one's own benefit (animus possidendi)"

39. The learning in ***Pye***[12] was accepted and adopted in ***Grace Latmore Smith v. David Benjamin; Grace Latmore Smith v. David Benjamin and Kenneth Baptiste***[13] . The Honourable Justice of Appeal Mendonça there endorsed the above statements of the law which were made by Lord Browne-Wilkinson in ***J.A. Pye (Oxford) Ltd. v Graham*** as the elements necessary to prove adverse possession.

40. At paragraph 47 of his judgment, Justice of Appeal Mendonça agreed that the principles stated in ***Pye,*** above, are applicable to Trinidad and Tobago and more particularly, to Sections 3, 4 and 22 respectively of the ***Real Property Limitation Act***.

41. In ***Arthur v. Gomes***[14]***,*** Wooding CJ considered the interest which is held by the Administrator General, when a person dies, and had this to say:

> *"On the death of a person all his estate real and personal whatever…shall vest in law in the Administrator General until the same is divested by the grant or probate of letters of administration to some other person or persons.*
>
> *But there is a proviso that –*
>
> > *'the Administrator General shall not, pending the grant, of such probate or letters of administration, take possession of or interfere in the administration of any estate…*

[12] Ibid
[13] Civil Appeal No.67&68 of 2007
[14] [1967-1968] Volume 11 WIR 25

<u>That means very clearly that the only bare legal title passes to the Administrator General. He is merely a depository so to speak, holding things in medio until such time as a grant is obtained. This is because the title at law cannot remain in vacuo pending the grant.</u>'"[15]

42. ***Section 4 of the Land Tenants (Security of Tenure) Act***[16] provides as follows:

> *"(1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this act applies subsisting immediately before the appointed day becomes a statutory lease for the purposes of this Act.*
>
> *(2) A statutory lease shall be a lease for thirty years commencing on the appointed day…"*

43. ***Section 2 of the Land Tenants (Security of Tenure) Act***[17] defines *"appointed day"* in this way:

> *"'appointed day' means the date of coming into operation of this Act…"*

The date of commencement of the Act is stated to be the 1st June, 1981.

Reasoning and Decision

44. In this action, there is no dispute that the claimants are entitled to the freehold interest in the disputed property. The property had originally been invested in the late Annisette Mitchell who died intestate in 1964. Julia, the only child of Annisette Mitchell also died

[15] Authur v. Gomes [1967-1968] 11WIR 25 at 28 H
[16] Land Tenants (Security of Tenure) Act Ch. 59:54
[17] Land Tenants (Security of Tenure) Act Ch. 59:54

intestate in 1967. By virtue of the ***Administration of Estate Ordinance***[18], the legal title in the property devolved to the Administrator General, to be held in *medio* for the person who would be appointed to represent the estate of Annisette Mitchell by obtaining Letters of Administration[19].

45. In August, 2005, the Administrator General obtained a grant of Letters of Administration of the Estate of Annisette Mitchell. In 2007, pursuant to the Warrant of Authority signed by the Attorney-General, the freehold interest in the land was transferred to the claimants by a Deed transferring to the claimants the freehold interest to be held by them as tenants in common.

46. Earlier in this judgment, I found as a matter of fact that on a balance of probabilities the defendant lived on the land since 1985. The question which now arises for my consideration is whether the defendant, having lived undisturbed on the subject property, without paying rent from the year 1985 successfully extinguished the title which had been held by Annisette Mitchell and which had been transferred at length to the claimants.

47. When considered superficially, the answer to this question seemed obvious. I have found on the evidence that the defendant has established, on a balance of probabilities, that he occupied the disputed property undisturbed for a continuous period of twenty-four (24) years beginning in 1985 and ending with the institution of this claim in 2009. The disputed LNKLANPUS OOANRE A U0 0 J 3 EDNK CD K JPOEJ EDA ABAJ JPOJ I A He held keys to the premises.

48. I also rejected the evidence of the claimant that they secured the property or entered the premises to maintain same. I have found the evidence of the claimants to be untenable and

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[18] Administration of Estates Ordinance Ch. 8 No. 1
[19] See Arthur v. Gomes (Supra) per Wooding CJ

have found it difficult to believe that two (2) elderly ladies could undertake the physically arduous work of trimming a mango tree and maintaining the premises without any assistance. The claimants have not alleged however that they received any assistance and have not relied on the testimony on anyone who assisted them, whether such persons offered their help gratuitously or were paid for it.

49. Accordingly, on the evidence before me, it was pellucidly clear that the defendant had extinguished the title which had originally been held by Ms. Annisette Mitchell and was entitled to the land by adverse possession.

50. This very simplistic analysis became complicated however, by the arguments introduced by learned Senior Counsel, Mr. Marcus, whose submission consisted of two (2) main strands. The first was pegged to the provisions of the ***Crown Suits Limitation Ordinance*** which, in its amended from, provides for the limitation of actions by the State after State land has been occupied for a period of thirty (30) years. According to the contention of learned Senior Counsel, the estate of Mitchell Annisette devolved to the Administrator General and thus became State Land.

51. In response to this submission, Mr. Goberdhan, learned counsel for the defendant relied on the judgment of ***Arthur v. Gomes***[20], where Wooding CJ held that the Administrator General holds the property of a deceased person in *medio* until there is a grant of letters of administration.

52. Accordingly, in my view, upon the death of Annisette Mitchell, her interest in the disputed property devolved upon her death to the Administrator General, in whom it would be held in *medio* until there was a grant of letters of administration. The Administrator General

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[20] Arthur v. Gomes [1967-1968] 11 WIR 25

accordingly, held the shell of the legal title, with the beneficial title being held in abeyance until a personal representative was appointed with responsibility to pass on the beneficial interest to anyone who might be entitled to it.

53. I therefore respectfully disagree with learned Senior Counsel and hold that the disputed property did not become State Lands upon the death of Annisette Mitchell.

54. I now proceed to consider whether the disputed property became State Land in August, 2005, when the Administrator General obtained letters of administration of the estate of the late Annisette Mitchell.

55. In my view, this issue, in the context of these proceedings, has no more than academic value, since I have already found as a matter of fact that the defendant occupied the premises from 1985[21]. The clear implication of this finding is that by the year 2001, the rights of any beneficiary to the estate of Annisette Mitchell would have been extinguished by operation of Section 22 of the ***Real Property Limitation Act***[22]**.**

56. In the event, however, that I am wrong in this finding of fact, I will proceed to consider the effect of the grant of letters of administration to the Administrator General. In my view, it is trite, that the grant of letters of administration places the personal representative in a fiduciary position to hold the beneficial interest of property on trust for the eventual beneficiaries. Thus, it was my view that even in August, 2005, the Administrator General, having obtained a grant of letters of administration would have held the property on trust for those who were beneficially entitled to the property.

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[21] See paragraph 21 *Supra*
[22] Real Property Limitation Act Ch. 56:03

57. Accordingly, it is my view and I hold that the beneficial ownership of the disputed property never passed to the State either upon the death of Annisette Mitchell or in August, 2005.

58. Rather the beneficial ownership of the land was only being held in *medio* by the Administrator General until it could be transferred to those deemed to be entitled to it.

59. I turn now to consider the second and more intricately crafted strand of the argument of learned Senior Counsel, Mr. Marcus who has argued that Mabel Honoré, became a statutory tenant in respect of the disputed property by virtue of the operation of the ***Land Tenants (Security of Tenure) Act***[23]. This tenancy, according to the argument of learned Senior Counsel was created in 1981 at the inception of ***the Act***[24], and would have subsisted for thirty (30) years, expiring in 2011.

60. According to the argument of learned Senior Counsel, any undisturbed occupation of the property by the defendant would have had the effect of extinguishing the right of the tenant and not the landlord, whose right of ownership would continue after the tenancy had come to an end.

61. The consequence of this argument would be that in the year 2001, after sixteen (16) years of occupation, the defendant would have succeeded in extinguishing the title of the tenant. However, at the end of the tenancy in 2011, the defendant would be confronted with the entitlement of the landlord, the owner of the freehold interest. The defendant would then need to accumulate another sixteen (16) years of undisturbed possession before he could assert title by adverse possession.

[23] Land Tenants (Security of Tenure) Act Ch. 59:54
[24] Ibid

62. In this regard, learned Senior Counsel has relied on compelling authority for asserting that adverse possession of tenanted land extinguishes the title of the tenant. Learned Counsel, in his closing submission[25] extracted this passage from the House of Lords decision in ***Fairweather v. St. Marylebone Property Co. Ltd.*** [26]

> *"…the effect of the extinguishing sections of the Limitation Act was that when a squatter dispossessed a lessee for the statutory period, it was the lessee's right and title as against the squatter that was finally destroyed and not his right or title as against persons who were not or did not take through the adverse possessor. The lessees estate as between himself and the lessor was not destroyed."*[27]

63. In ***Fairweather***, these words of Lord Denning are also apt:

> *"…the freehold is an estate in reversion within Section 6 (1) of the Act of 1939, and time does not run against the freeholder until the determination of the lease"*[28]

64. This learning was adopted and applied by the Honourable Justice Hamel-Smith as he then was in ***Rajdai Persad v. George John*** HCA 1809 of 1981 in this way:

> *"But attorney for the plaintiff referred me to the authority in* **Fairweather v. St. Marylebone Property Co. Ltd***. …which establishes that when a squatter dispossesses a lessee…the rights of the owner of the reversion are not automatically affected…"*

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[25] Closing Submission for the claimants filed on the 24th April, 2014.
[26] Fairweather v. St. Marylebone Property Co. Ltd. [1963] AC 510
[27] See the head not of Fairweather v. St. Marylebone Property Co. Ltd. [1963] AC 510
[28] (Ibid)

65. In response to this argument, learned attorneys-at-law for the defendant argued that in the first place, the operation to the ***Land Tenants (Security of Tenure) Act***[29] was not pleaded. In this regard, I respectfully agree with the learned attorney-at-law for the defendant that no material fact was pleaded in either the Statement of Case or the Reply and Defence to Counterclaim to allege that Mabel Honoré had become a statutory tenant by virtue of the ***Land Tenants (Security of Tenure) Act***[30].

66. In my view this dispenses altogether with the very attractive and intricate argument of learned Senior Counsel. Where there has been a failure to plead a material fact, it is not open to any party to advance arguments in support of it at a later stage of the trial.

67. In the event that I am wrong in this assessment and out of deference to learned Senior Counsel, Mr. Marcus, I will proceed to consider the argument of learned Senior.

68. In my view, the critical question upon which the entire argument turns is whether in fact Mabel Honoré became a statutory tenant by operation of the ***Land Tenants (Security of Tenure) Act***[31]**.**

69. By Section 3 of the ***Land Tenants (Security of Tenure) Act***, ***the Act*** applied to these tenancies:

> *"...on which at the time specified in Section 4 (1) a chattel house used as a dwelling is erected or a chattel house intended to be used as a dwelling is in the process of being erected."*

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[29] Land Tenants (Security of Tenure) Act Ch. 59:54
[30] Ibid
[31] Ibid

70. By Section 4 (1), extracted supra, every tenancy to which ***the Act*** applies subsisting before the appointed day shall as from the appointed day become a statutory lease for the purposes of this ***Act.***

71. In these proceedings, there is no real dispute that Mabel Honoré had been the tenant of Annisette Mitchell. No details were provided as to the terms of the tenancy, whether she was a licencee or a lessee, whether her tenancy was month to month, year to year or for some longer term. The Court is apprised only of the fact that Ms. Honoré made payments at unknown intervals in unknown circumstances.

72. Nevertheless, Ms. Annisette Mitchell, as the landlady died in 1964. No one succeeded her as landlord. Her estate remained in abeyance until the Administrator General obtained letters of administration in 2005. Any tenancy, be it month to month or year to year would have, by 1981, been determined by effluxion of time. Mabel Honoré herself would have been in occupation, adverse to the right of the estate of Annisette Mitchell as title holder. It is therefore my view and I hold that the estate of Mabel Honoré, on the 1st June, 1981, the day appointed by the ***Land Tenants (Security of Tenure) Act*** was not the holder of a subsisting tenancy for the purposes of ***the Act***. I therefore hold this ***Act*** to be irrelevant to these proceedings.

73. It follows therefore that it is my finding that the defendant enjoyed undisturbed possession of the disputed premises from 1985 to 2009. Any rights held under the estate of the late Annisette Mitchell would have been extinguished since the year 2001, at which date the defendant would have been entitled to a declaration that he was owner by adverse possession.

Orders

74. The claim is dismissed.

75. It is further adjudged and declared that the defendant is entitled to remain in possession of the disputed parcel of land.

76. The claimants pay to the defendant the costs of this action in the sum of fourteen thousand dollars ($14,000.00).

Dated this 8th day of June, 2015.

M. Dean-Armorer
Judge