

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 0722/2000

BETWEEN:

(1) GREGORY EDWARD
(2) MARGUERITE EDWARD

Claimants

and

(1) TENNYSON GAJADHAR
(2) GRETIAN ALEXANDER
(3) HEIRS ELIZABETH FLORINE
(4) EDWIN EDWARDS

Defendants

Appearances :

Mr. D. Theodore with Mr. C. Foster for Claimants
Ms. B. Portland for 1st, 2nd and 3rd Defendants
Ms. S. John for 4th Defendant

2004: February 5, March 19,
June 3, December 6, 7, 15
2005: January 20,
2007: March 2.

JUDGMENT

INTRODUCTION

[1] EDWARDS, J.: This action has been brought as a result of a dispute between neighbouring parties, concerning a survey of land commissioned by the 2nd, 3rd and 4th Defendants, and carried out by the 1st Defendant a Licensed Land Surveyor, on 12th May 1999.

(2) The impugned survey plan which is dated 24th June 1999 and recorded 9th February 2000, purports to give to the 4th Defendant a lot of land that he partly occupies, while reconfiguring and changing the location of the 2 parcels of land owned by the 2nd and 3rd Defendants, contrary to the Map Sheet for Block 0036C at the Registry of Lands. This survey plan is inconsistent with the previous Survey Plan prepared by Licenced Land Surveyor Mr. Dunstan Joseph on 29th April 1998, and recorded on 3rd February 1999, relating to the said parcels of land belonging to the Claimants and the 2nd and 3rd Defendants.

[3] By their claim filed on 21st July 2000 the Claimants claim –

(1) A declaration that the survey dated 24th June 1999 and lodged as Drawing Number ALR 1478R Record Number 49/2000 is null and void and without effect; and that the survey dated 29th April 1998 and lodged as Drawing Number ALR 1448B takes precedence.

(2) A declaration that the fourth named Defendant is not entitled to land as shown by the survey Drawing Number ALR 1478R.

(3) An injunction restraining the second and third Defendants from entering upon the Claimant's land.

(4) Damages

(5) Interest

(6) Costs.

[4] The 2nd and 3rd Defendants allege that the Claimants have wrongly removed the fence on their property which was placed there in accordance with the Survey Plan of the 1st Defendant, replacing it with a tall galvanize fence erected in accordance with Survey Plan ALR 1448B. They contend that this has deprived them of the use and enjoyment and development of part of their lands.

[5] The 1st Defendant contends that he executed his survey in accordance with the undemarcated boundary line on the Registry Map Sheet and the Deeds of

Memorandum of adjoining landowners, the Claimants, and the 2nd, 3rd and 4th Defendants. By his pleadings he is apparently asserting that he was justified in carving out the land for the 4th Defendant and encroaching on the parcel of land belonging to the Claimants based on the said undemarcated boundary line and the Deed of Memorandum of the 4th Defendant.

[6] The 4th Defendant has pleaded that his parcel of land has a common boundary with the Claimants' undemarcated boundary; and that his parcel was at all times shown on the Registry Map Sheet as part of the Claimants' land.

[7] The 2nd and 3rd Defendants have Counter Claimed for:

- (1) A Declaration that the Survey Plan of the 1st Defendant supercedes the previous Survey Plan lodged as Drawing Number ALR 1448B.
- (2) A Declaration that the Claimant is not entitled to enter or use or construct any buildings or structures on the lands of the 2nd and 3rd Defendants.
- (3) A Declaration that the Claimants are not entitled to enter or use or construct any buildings or structures on the undemarcated boundary.
- (4) An injunction to restrain the Claimants, their servants or agents from constructing and building any structures or buildings thereon.
- (5) An order that the Claimants do forthwith demolish and remove any structures recently constructed on the properties.
- (6) Damages
- (7) Further or Other Relief
- (8) Costs.

BACKGROUND FACTS

- [8] The Claimants Mr. Gregory Edward and Ms. Marguerite Edward (ME) are the absolute owners of land at Canaries, registered as Parcel No. 0036C-269 in the Land Register, since the 19th August 1987. Each of them own ½ share. They purchased this 10 acres of land which was the Remainder of the Canaries Estate from Dorothy Augustin by Deed of Sale dated 12th June 1982. Only M.E. testified at the trial.
- [9] Their neighbours are the Defendants Mr. Gretian Alexander (G.A.), his sister Elizabeth Florine (deceased) (EF) and Mr. Edwin Edwards.
- [10] G.A. is the absolute owner of ½ share of the land at Canaries registered as Parcel No. 0036C-325. The absolute owner of the other ½ share is Ms. Mary Alexander. This Registration was on 19th August 1987. They purchased this 9375 square feet of land from the Canaries Estate from Dorothy Augustin by Deed of Sale dated 30th January 1978. Only G.A. testified at the trial.
- [11] E.F. was the absolute owner of the land at Canaries registered as Parcel No. 0036C 326 since 19th August 1987. The death of E.F. is not recorded on the Land Register, though it has been pleaded and deposed to by G.A. He is Elizabeth Florine's personal representative. She purchased this 10,000 square feet of land from the Canaries Estate from Dorothy Augustin by Deed of Sale dated 28th August 1978.
- [12] Mr. Edwin Edward has no registered title to his land despite his purchase of approximately 3360 square feet of land from the Canaries Estate on 8th October 1962, from Rupert Denis Mc Lean Barnard and Beryl Marguerite Barnard. The Deed of Sale dated 8th October 1962 discloses that Rose Fanis De Reginald Fanis represented Mr. Edwin Edwards in this transaction. Mr. Edwin Edwards has no registered title because he failed to have his rights and interests in the land,

adjudicated and registered, during the Adjudication and Titling Process. This was enabled by the Land Adjudication Act No. 11 of 1984 which came into force on the 8th August 1984, the Land Adjudication (Amendment) Acts Nos. 7 of 1986 and 19 of 1988 which came into force on 2nd August 1986 and 1st January 1987 respectively, and the Land Registration Act 1984 with Amendments, now Chapter 5.01 of the Revised Laws of St. Lucia 2001. Though the force of the Land Adjudication Act and its Amendments are now spent, the Land Adjudication Act is included in the recent Law Revision as Chapter 5.01 of the Revised Laws of St. Lucia 2001.

- [13] By paragraph 13 of her Statement of Claim M.E. pleaded that since Mr. Edwin Edwards never made a claim to his alleged land during the Land Registration and Titling Project or at all and has never been in active or visible occupation of the said property, he is estopped from so doing, consequent upon which he has lost his right to claim the said property.

ISSUES

- [14] The issues therefore for my determination are –
- (i) Whether or not Mr. Edwin Edward has been in visible occupation of any land adjoining or forming part of the Claimants' property?
 - (ii) Whether or not Mr. Edwin Edwards has lost his right to claim his property?
 - (iii) Whether or not Mr. Tennyson Gajadhar can lawfully alter the approximate boundaries and the approximate situation of the parcel of lands belonging to the Claimants and the 2nd and 3rd Defendants to accommodate Mr. Edwin Edwards' Claim to his property? If no -

- (iv) What remedies are available to the Claimants in the circumstances?
- (v) If the answer to (iii) is yes, then what remedies are available to the 2nd and 3rd Defendants in the circumstances?

THE EVIDENCE

- [15] In considering the first issue I must review the evidence of the witnesses and the documentary evidence. Mr. Edwin Edwards, like M.E., G.A. and E.F. have all been absentee land owners of their respective properties since acquiring their land. The evidence clearly discloses this.
- [16] In the absence of any testimony at all from Mr. Edwin Edwards, I have carefully examined the evidence of M.E. and G.A. in light of the pleadings.
- [17] M.E. testified under cross examination by Learned Counsel Mr. John, that she was not aware that Mr. Edwin Edwards had land in the area when she acquired her land in 1982, neither was she aware that he occupied land adjacent to hers. She admitted seeing him only recently when he came with the Chief Surveyor. She said that she knew that G.A.'s land was in the vicinity of hers, she saw G.A. in possession of land, but she never knew who the land belonged to. She said she would not be surprised to hear that the land occupied by G.A. identified as Lot No. 3 on the 1st Defendant's impugned Survey Plan, belonged to Mr. Edwards. She has seen crops growing on that land, and there is a house there also she admitted. She testified also that an overseer of the Canaries Estate and herself had walked the land on at least 3 occasions prior to purchasing, the boundaries were shown to her, and she was informed that G.A., E.F. and Veronica Lansiquot were the persons whose lands bounded with her land. Given the size of the remainder of the Canaries Estate land that M.E. acquired. I find it incredulous that she walked all of the land before purchasing it.

[18] G.A. testified under cross examination by Counsel Mr. John, that he knew Mr. Edwin Edwards had a parcel of land in the area as he was told that. He said he never disputed Mr. Edward's ownership of his land. Regarding Lot 3 on the 1st Defendant's impugned survey plan, G.A. testified that it belonged to Mr. Edwin Edwards, that there was a guy looking after the land for Mr. Edwards, and that crops were grown on the land for purposes of Edwin Edwards. Under cross examination by Mr. Theodore, G.A. testified that his land butts M.E.'s land at the top of sides facing the hills while Mr. Edwin Edwards has no land at the top, it is on the side of his G.A.'s land. He said also that Mr. Edwin Edwards' land does not butt the land of M.E.

[19] Mr. Gajadhar the 1st Defendant also testified that he only discovered which land was Mr. Edwin Edwards' land when he went on the site to survey. He said he discovered this by means of occupation and a party who was in charge of the property, and also the adjoining owner Lansiquot.

[20] I have focused on Mr. Edwin Edwards' Deed of Sale dated 8th October 1962. It discloses that his lot of land was bounded on the North by property of James W. Mitchell, South by that of Quentin Ferdinand, East by the remainder of Canaries Estate, and West by the property of Leon Brice or howsoever otherwise the same may be bounded. Of the several Surveyor's Plans tendered at the trial, none of the present adjoining owners are reflected in Mr. Edwin Edwards' Deed of Sale. I note that there is a George Ferdinand to the southern boundary of Mr. Edwin Edwards' Lot 3 in Mr. Gajadhar's impugned Survey Plan.

[21] It is important also to consider the evidence of Mr. Earl Cenac, Licensed Land Surveyor who was the Claimants' Witness. He deposed in his Witness Statement as follows –

"16. The Fourth Defendant, Edwin Edward is bounded on the North by James W. Mitchell on Canaries Estate but he could

have been placed some distance South of where the first Defendant placed him, and because of the time that he bought, he still would be bounded by James W. Mitchell or Canaries Estate in the North. Therefore placing Edwin Edward in other positions would still meet certain criteria of his deed.

17. The Second Defendant, Gretien Alexander's deed says that he is bounded on the west by Veronica Lansiquot and not Edwin Edward, the fourth Defendant, in spite of the fact that Edwin Edward, the fourth Defendant, bought long before either of them. Yet Tennyson Gajadhar, the first named Defendant places the fourth Defendant Edwin Edward between Veronica Lansiquot and the second named Defendant Gretien Alexander, which is totally contrary to the second Defendant's Deed of Sale.
18. The Claimant's deed says that they are bounded on the South by Flora Villa Road, Veronica Lansiquot, Gretien Alexander and Elizabeth Florine. It does not mention Edwin Edward, although Edwin bought before them all. Yet, based on the First Defendant's Survey Plan the Claimants would be bounded with the Fourth Defendant on the South.
19. It is speculative at best to suggest that Edwin Fanus and Edwin Edward are one and the same person merely because Fanus bought for Edward. Indeed, it is not Edwin Fanus who bought for Edwin Edward but rather Rose Fanus. When the boundaries for Tommy St. Omer were described, the name Edwin Edward was said to be bounded on the West, not Edwin Fanus.

20. Edwin Edward, as mentioned in Gretien Alexander's Witness Statement purchased before all the other above named persons that bought from the Canaries Estate, yet he is mentioned only in describing Tommy St. Omer's parcel. He is placed to the West of it and his placement suggests that he occupies the same portion of land as Richard La fitte.

21. The parcel East of Veronica Lansiquot belongs to Gretien Alexander as outlined in his Deed of Sale and is shown as such on the land registry map sheet of the area. In fact, Veronica Lansiquot's eastern line is shown as a black line, meaning that it has been demarcated. I note here that once that boundary had been established a surveyor does not have the authority to re-assign the boundary. Only the Court or Land Registrar can do this."

[22] The Deeds of Sale of all the parties/and adjoining landowners were all based on description, directions and estimated size without the mathematical exactness of a survey plan. Consequently, the words "howsoever otherwise the same may be bounded" cannot be ignored in determining the positions of the land that the parties and other adjoining landowners were entitled to from the Canaries Estate for each purchaser's sale transaction.

[23] Having considered the submissions of Counsel on this issue, I have concluded from all of the evidence, that on a balance of probability, from as far back as 1978 when G.A. acquired his parcel 325, Mr. Edwin Edwards had been visibly occupying land in the westerly area of G.A.'s said parcel under the misconception that such land is the land he was entitled to under his Deed of Sale dated 8th October 1962.

- [24] Since it is probable that it was before January 30, 1978 that G.A. observed the presence of Mr. Edwin Edward as occupier of such land, at that time, the portion of Canaries Estate that was then unsold would be to the North and East of the land that Mr. Edwin Edwards occupied as well as the land that Mr. Edwin Edwards was occupying. This is borne out by the Deeds of Sale for Veronica Lansiquot's 2 lots – Parcels 297 and 298. Both parcels are described as being bound to the East by Canaries Estate Lands between 26th June 1965 and 9th April 1973.
- [25] I find therefore that the land occupied by Mr. Edwin Edwards probably forms a part of the land that was conveyed to G.A. and Ms. Mary Alexander on 30th January 1978.
- [26] The registered owners of Parcel 325 therefore acquired their land subject to Mr. Edwin Edwards visible occupation of their land.
- [27] In order to address the second issue, as to whether or not Mr. Edwin Edwards has lost his right to claim his property, I must review the relevant provisions in the Land Adjudication Act and the Land Registration Act.

THE ADJUDICATION AND TITLING PROCESS

- [28] The Adjudication process which was under the Adjudication officer, required the Survey Officer appointed by him to carry out the required survey work in the adjudication section, and prepare or cause to be prepared a demarcation index map compiled from survey data or aerial photographs. This Map should show "each parcel of land identified by distinguishing number, except that the public roads" should not be so identified: (Section 13 of the Land Adjudication Act).

[29] The Recording Officer who was also appointed by the Adjudication Officer, was required by virtue of Section 14 of the Land Adjudication Act, **“to consider all claims to any interest in land and after such investigation as he or she considers necessary, . . . [to] prepare in accordance with Section 18 a record in respect of every parcel of land shown on the demarcation map.”**

[30] Pursuant to Section 18 (1) of the Act, the Adjudication Records consisted of a form in respect of each parcel of land showing among other things –

- “(a) the number and approximate area of the parcel as shown in the Demarcation Map;**
- (b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any restriction on his or her power of dealing with it, or the fact that the parcel is Crown Land;**
- (c) such particular of any right registrable under the Land Registration Act, as shall enable it to be registered as a lease, hypothec or servitude as the case may be, affecting the parcel together with the name and description of the person entitled to the benefit thereof and particulars of any restriction and on his or her power of dealing with it;**
- (d) . . .**
- (e) a list of the documents, if any produced to the recording officer and retained by him or her for the purpose of adjudication, and**
- (f) the date on which the form is completed.”**

[31] Section 23 of the Adjudication Act provided:

“After the expiry of 90 days from the date of publication of the notice of completion of the adjudication record or on the determination by the adjudication officer of all petitions presented in accordance with section 20 (1) [Appeals against the Adjudication Record], whichever shall be later, the adjudication record shall, subject to the provisions of the Land Registration Act, become final and the adjudication officer shall sign a certificate to that effect and shall deliver the adjudication record and demarcation map to the Registrar together with all documents received by him or her in the process of adjudication.”

[32] Section 14 of the Land Registration Act provides as follows:

- “(1) The Registry Map shall be compiled from the demarcation maps under the Land Adjudication Act and shall be divided into registration sections which, so far as is possible, shall have the same boundaries and names as the adjudication sections, and shall be divided into blocks which shall be given the same letter or numbers or combinations of letters and numbers as are given on the demarcation maps.
- (2) The parcels in each registration section or block shall be numbered consecutively following the numbering in the adjudication proceedings, and the name of the registration section and the number of the parcel shall together be a sufficient reference to any parcel.
- (3) The Registrar may, at anytime cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

- (4) A plan may be filed in respect of a particular parcel to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

[33] While Section 15 of the Land Registration Act provides for any land to be surveyed and the Registry Map corrected at the instance of the Registrar, Section 16 provides for mutation as follows -

“16 (1) On the application of a proprietor of land, and subject to the agreement of all persons affected thereby, the Registrar may order alteration of the Registry Map, but no such alteration shall be affected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form and the mutation form shall be filed.

(2) Whenever the boundary of a parcel is altered on the Registry Map, the parcel number shall be cancelled and the parcel shall be given a new number.”

[34] Now since Mr. Edwin Edwards' rights and interests in his land was never adjudicated, the question to be answered is: What should have happened to his land under the Land Adjudication Act and the Land Registration Act?

[35] Pursuant to Section 9 of the Land Adjudication Act, the Adjudication Officer or Recording Officer was required to proceed as if a claim had been made in respect of Mr. Edwin Edwards' 3360 square feet of land, where any of those officers were satisfied that Mr. Edwin Edwards had a claim to the interest in the land within that adjudication section, even though Mr. Edwin Edwards had not made a claim to the said land.

- [36] In preparing the adjudication record, the Recording Officer was required to record land as Crown Land if the Recording officer was **“satisfied that any land is entirely free from private rights; or that the rights existing in or over it do not amount to full ownership and are not such as to enable him or her to proceed” to record any person in possession of the land, or having a right to such land as owner of the parcel with a provisional title to the land:** (Section 116).
- [37] Section 17 (1) of the Land Adjudication Act also states that **“All unoccupied land shall be deemed to be Crown land until the contrary is proved.”** However we are not dealing with unoccupied land in this case, we are dealing with land mistakenly identified and occupied as land acquired under a Deed of Sale.
- [38] The Adjudication records that were tendered as evidence do not disclose that Mr. Edwin Edwards’ 3360 square feet of land were recorded as Crown Land pursuant to Section 16 (1) (b) of the Land Adjudication Act.
- [39] Had this been done, it is probable in my view that Mr. Edwin Edwards would be able to petition the Governor General. Section 2 of the Crown Lands Act Cap 5:02 of the Revised Laws of St. Lucia 2001 contemplates that Petitions can be made to the Governor General concerning Crown Lands. Section 2 of this Act provides that the power and authority in respect of the disposal of Crown Lands shall be exclusively vested in the Governor General. Section 7 provides for the Governor General to make regulations or rules **“(a) with regard to the sale, disposal, occupation and allotment of Crown lands.”**
- [40] Section 26 of the Land Registration Act also states that: **“The registration of land as Crown land shall, subject to any registered encumbrances, enable the Governor General to dispose of such land by a disposition registered under this Act.”**

- [41] In the absence of any evidence therefore that Mr. Edwin Edwards' 3360 square feet of land from the Canaries Estate was recorded as Crown Lands, I have concluded on a balance of probability that it was recorded as part of Parcel 296, belonging to M.E. and her husband Mr. Gregory Edward.
- [42] Learned Counsel Mr. John in arguing that Mr. Gajadhar's function as a Surveyor was to create parcels of land based on the Registry Map, appealed to Section 9 (1) of the Land Adjudication Act which states –
- “(i) If the adjudication officer, demarcation officer or recording officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section, the adjudication officer, demarcation officer or recording officer may, in his or her discretion proceed as if a claim had been made, and may call upon the Registrar of Deeds to supply him or her with a certified copy of any document or relevant title relevant thereto.”**
- [43] Mr. John argued further that Section 9 (1) of the Act is to be construed so as not to dispossess anyone who is in occupation of a piece of land. Mr. John contends that this section was incorporated into the Act to avoid persons being displaced from their land and being helpless to do anything after the land register is endorsed as a result of a survey. In many cases, he argued, this section is seen to cure the mischief of other persons buying land over the head of another.
- [44] This argument of Mr. John has ignored that the force of the provisions of the Land Adjudication Act are now spent, and cannot be relied on to support a late claim after the adjudication process was finalized.
- [45] I have also concluded that in the absence of any claim from Mr. Edwin Edwards that he had any existing rights to the land he was occupying, or that he was in

possession of the said land, the Adjudication officer did not proceed as if Mr. Edwin Edwards had made a claim.

[46] I find that notwithstanding that Mr. Edwards was in fact occupying the said lands, the Adjudication Officer was satisfied that G.A. and M.E. had a good title to their individual parcels and that Mr. Edwin Edwards had not acquired or was in the course of acquiring a title thereto under any law relating to prescription or limitation. The Adjudicating Officer, pursuant to Section 16 (ii) of the Adjudication Act, was further satisfied that G.A. and M.E. would succeed in maintaining their title to their respective properties against any other person claiming the land or any part thereof.

[47] In the existing circumstances therefore at the time of preparing the Adjudication Record for the respective Parcels, the Recording Officer recorded G.A. and Ms. Mary Alexander as absolute owners of Parcel 325, and M.E. and Mr. Gregory Edward as absolute owners of Parcel 296, notwithstanding Mr. Edwin Edwards' mistaken occupation of part of Parcel 325, or that he was yet to enter into possession of the 3360 square feet of land from the Canaries Estate lands that he had bought.

[48] After the Adjudication Record had been completed, the Adjudication officer was required by Section 19 of the Land Adjudication Act to **"give notice of the completion thereof and of the place and places at which the same can be inspected together with the demarcation map."**

[49] Section 20 of the Land Adjudication Act states –

"The Minister or any person named in or affected by the adjudication record or demarcation map who considers such record or map to be inaccurate or incomplete in any respect or who is aggrieved by any act or decision of the demarcation officer or survey officer or by any

entry in or omission from the adjudication record by the recording officer, may within 90 days of the day upon which notice of completion of the adjudication record is published, give written notice of his or her intention to petition the adjudication officer in respect of the act, decision, entry or omission concerned and the petition shall be heard and determined by the adjudication officer.”

[50] In the absence therefore of any petition from Mr. Edwin Edwards concerning –

- (a) the fact that he had bought 3360 square feet of land from the Canaries Estate under his Deed of Sale dated 8th October 1962; and
- (b) the fact that he was in mistaken occupation and possession of probably part of Parcel 325,

the Adjudicating Officer would not be aware that the records relating to Parcels 296 and 325 needed corrections.

[51] I therefore agree with the submissions of Learned Counsel Mr. Theodore, who in arguing that it is too late for Mr. Edwin Edwards to assert any claim to the land, has relied on the following 2 authorities James Ronald Webster and another v Beryl St. Clair Fleming Civil App. No. 6 of 1993 (Anguilla) delivered 5/5/95; Skelton and Others v Skelton Eastern Caribbean C.A. 177 (BVI); (1986) 37 W.I.R. 177.

[52] I have already reproduced Section 23 of the Adjudication Act at paragraph 31 above. Considering a provision similar to this provision in the Land Adjudication Ordinance 1974 (Anguilla), Byron J.A. at page 9 in Webster declared: “The legislation intends that this adjudication process should be final except for a right to appeal to the High Court against the decisions and acts of the Adjudication officer within a limited time . . .”

- [53] In Skelton at page 180 para f, Robotham C.J. declared in a similar manner that the BVI provision comparable to Section 23 of the St. Lucia Act **“is designed to bring to a finality the adjudication process and firmly bring the land under the provisions of the Registered Land Ordinance 1970, Section 9 (1) of which reads: “The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Ordinance 1970 . . .”**
- [54] It is true that by virtue of Sections 23 and 28 of the Land Registration Act, at the time when M.E.’s Parcel 296 was registered on the Land Register on 1st August 1987, the absolute ownership of the parcel was vested in her and her husband with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject to the overriding interests as may subsist and affect the said parcel without being noted on the Register. A similar situation exists for Parcel 325 in relation to G.A. and Ms. Mary Alexander who are registered as absolute owners.
- [55] Section 28 (g) of the said Act states that **“the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed”** is a subsisting overriding interest which may affect a parcel of land.
- [56] Learned Counsel Mr. John submitted that Sections 28 (g) of the Land Registration Act is consistent with Section 70 (1) (g) of the English Land Registration Act 1925 which was interpreted by Lord Denning in Strand Securities Ltd v Caswell [1965] 2 W.L.R. 958 at 970 in the following manner:

“Paragraph (g) is an important provision. Fundamentally its object is to protect a person in actual occupation of land from having his rights lost in the welter of registration. He can stay there and do

nothing. Yet he will be protected. No one can buy the land over his head and thereby take away or diminish his rights. It is up to the purchaser before he buys to make inquiry on the premises. If he fails to do so, it is at his own risk. He must take subject to whatever rights the occupier may have. Such is the doctrine of *Hunt v Luck* [[1901] 1 Ch. 45] for unregistered land. Section 70 (1) (g) carries the same doctrine forward into registered land but with this difference. Not only is the actual occupier protected, but also the person from whom he holds. It is up to the purchaser to inquire of the occupier not only about the occupiers own rights, but also about the rights of his immediate superior.”

[57] Based on my previous findings, Section 28 (g) of the Land Registration Act, the judicial statements of Lord Denning as to both the common law concerning unregistered land, and the Statutory provisions concerning registered land, I hold that Mr. Edwin Edwards’ occupation of the land owned by G.A. constitutes an overriding interest affecting Parcels 325.

[58] I therefore conclude that though Mr. Edwin Edwards has lost his right to claim his 3360 square feet of land under his Deed of Sale dated 8th October 1962, he has an overriding interest in the land he presently occupies.

[59] This therefore leads me to consider the third issue concerning Mr. Gajadhar’s impugned Survey Plan.

THE POSITIONING AND ALTERATION OF BOUNDARIES

[60] Mr. Edwin Edwards was never the owner of the land he occupied within the context of Articles 360, 361 and 363 of the Civil Code Chapter 242 Revised Laws 1957.

- [61] Article 360 states that a person may have with respect to property either a right of ownership, or a simple right of enjoyment, or a servitude to exercise.
- [62] Article 361 states that **“Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations made in accordance with law.”**
- [63] Article 363 states that **“Ownership in a thing, whether moveable or immovable gives the right to all it produces, and to all that is joined to it as an accessory whether naturally or artificially. This right is called the right of accession.”**
- [64] Consequently, based on my findings Mr. Edwin Edwards as Occupier had only a right to the usufruct of the immovable property he was mistakenly on at the will of the then owners of Canaries Estate when his occupation commenced prior to 1978.
- [65] Though Mr. Edwin Edwards **“can stay there and do nothing,”** and **“no one can buy the land over his head and thereby take away or diminish his rights”** in the words of Lord Denning in Strand Securities supra, he cannot claim this property as his own, since his Deed of Sale though recorded on 12th October 1962, conferred no title on him.
- [66] It follows therefore that the actions of Mr. Gajadhar were unlawful, and constituted a trespass when he sought to carry out any instructions that he may have got from Mr. Edwin Edwards, and which led him to change the boundaries of M.E.'s property.
- [67] Much has been said in this case, concerning the undemarcated boundary lines existing on the relevant Registry Map. This, it has been argued by Learned Counsel Ms. Portland, provided the basis for Mr. Gajadhar's intervention.

[68] Ms. Portland contends, that up to the date of filing the claim on 21st July 2000 the eastern and northern boundaries of Parcels 325 and 326 were never determined.

[69] The Registry Map for the said Adjudication Section shows that the Northern and Eastern boundary of Parcel 325 where it bounds Parcel 296, the Western boundary of Parcel 326 where it bounds Parcel 325, and the northern, eastern and southern boundary of Parcel 326 where they bound Parcel 296 were undemarcated at the date of registration. These boundaries were therefore not fixed boundaries. The approximate area of their land is not stated on the Land Register for each of these parcels.

[70] The Adjudication Records and the Land Register in respect of the said Parcels all are endorsed with the following note: **“NO SUBDIVISION ADJACENT TO UNDEMARCATED BOUNDARIES TILL DEMARCATED TO THE SATISFACTION OF THE REGISTRAR.”**

[71] The fact that these boundaries were undemarcated leads me to focus on Section 17 (1) of the Land Registration Act which states:

“Except where, under Section 18, it is noted in the register that boundaries of a parcel have been fixed, the Registry Map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.”

[72] It is obvious therefore that the law permits a subsequent survey plan to be prepared and filed in the Land Registry where undemarcated boundaries exist on the Registry Map for any particular parcel of land.

[73] The problem in this case arises because of competing survey plans. From as far back as 1982 after M.E. had acquired the remainder of the Canaries Estate, she

had commissioned Mr. Jerome Joseph to survey the land she believed she had acquired as 10 acres. M.E. testified that Mr. Jerome Joseph's Survey Plan No. ALR 1013 R certified and recorded 25th January 1983, revealed that she had acquired only 5.70 acres.

[74] The evidence discloses that towards the ending of 1997 the persons who were cultivating the parcels of G.A. and E.F. in G.A.'s absence, served M.E. with a notice of intention to survey Parcels 325 and 326. The survey was carried out without objections on 28th March 1998, by a technician Mr. Cooper, who worked with Mr. Dunstan Joseph the Licensed Land Surveyor, and G.A. was then present.

[75] M.E. deposed in her Witness Statement that G.A. asked her to sell him a bit of land because he intended to build, and he had no vehicular access to his parcel, since the footpath leading to his Parcel 325 had been blocked by a garage built by Mr. Demacque. M.E. testified that she refused to sell him her land as she wished to maintain her privacy. She testified that about 5 weeks later after several other attempts were made by G.A. to convince her to sell him a bit of her land, Mr. Cooper the survey technician returned to rerun the boundary line he had previously established in March, which all the parties had agreed on.

[76] M.E. objected to this, and wrote a letter to the Chief Land Surveyor Mr. Martyr voicing the reasons for her objections. She requested Mr. Martyr to visit the site since the landscape and old fencing that had been in place since before 1982 was still in existence. She said that Mr. Martyr held a meeting with Mr. Jerome Joseph who had produced her survey plan showing she had 5.70 acres, Mr. Dunstan Joseph and his technician Mr. Cooper.

[77] Mr. Earl Cenac another Licensed Land Surveyor represented her at this meeting, and she had notified G.A. about the meeting. She testified that Mr. Martyr walked the land and it was agreed that she should give up a 10 feet access which would remain her property while accommodating better access for G.A. and E.F. for

Parcels 325 and 326. This area was surveyed by Mr. Dunstan Joseph and Mr. Cooper and his prepared Survey Plan Drawing No. ALR 1448B dated 29th April 1998 was lodged on 3rd February 2009, and recorded as No. 57 of 1999.

[78] M.E. deposed also that on 8th May 1998 Mr. Gajadhar served her with a Notice that he intended to survey Parcels 325 and 326. During this survey she saw Mr. Gajadhar's workmen pulling down her fence, trampling through her cultivation and setting up their equipment. She said they were about 50 feet above the 10ft access that had been surveyed and fenced off. Despite her objections Mr. Gajadhar's workers hurled insults at her and ignored her objections, while Mr. Gajadhar ignored the situation. He only replied to her that **"this is a new survey"** when she told him that a survey was already carried out and a plan had been lodged. She registered her objections by letter dated 13th May 1999 to the Acting Chief Land Surveyor Mr. Foche Modeste.

[79] M.E. subsequently employed Mr. Cenac to resurvey her land after she became aware that Mr. Jerome Joseph's survey was inaccurate, and that in 1982 he had returned to her property and ran different boundary lines, she said.

[80] Mr. Cenac resurveyed her property, and produced Survey Plan ALR 1471 K dated 20th October 1999. This was lodged on 3rd December 1999 and Recorded No. 605 of 1999.

[81] Then between December 1999 and January 2000, G.A. sent 2 men into M.E.'s backyard to clear shrubs and plant poles on M.E.'s land. M.E. testified that she inquired what they were doing there, and was told that the boss man told them he was going to fence. They called out to G.A. who was the bossman, and G.A. told her **"The surveyor surveyed this land for me."** She said she asked him if he had seen any concrete iron pegs here. G.A. replied **"Don't worry about concrete pegs. I am going to fence my land."**

- [82] This was the straw that broke the camel's back. M.E. contacted her lawyer, and a law suit was filed and injunction granted on 29th February 2000.
- [83] M.E. said that Mr. Gajadhar returned to her property after the injunction was obtained with buckets and what appeared to be cement. She requested him to leave, told him about the injunction, and mentioned that if his plan is already lodged why is he still carrying out work and surveying. She also called the Police who told her since it was a civil matter she should contact her attorney.
- [84] G.A. testified that the Survey Plan of Mr. Gajadhar was carried out because the properties of himself, E.F. and Mr. Edwin Edwards had not been demarcated during the Land Adjudication and Titling Project and it still remains undemarcated on the Map Sheet at the Registry.
- [85] He said that he had objected to Mr. Dunstan Joseph's Survey Plan which showed the 10ft access for his and E.F.'s parcels on M.E.'s property, because he had not agreed to it. These were the reasons why he caused Mr. Gajadhar to conduct the survey.
- [86] He deposed also that at the time of purchase Mr. Charles Augustin, the husband of the Vendor, had shown him and E.F. the extent of the boundary for the property they were purchasing, and the Vendor had agreed to it. He resided in England with his wife Ms. Mary Alexander, and family, and now that he had retired he wished to construct his retirement home on Parcel 325 as soon as possible. He said he had fenced his property in accordance with Mr. Gajadhar's plan, and M.E. had removed it and placed a tall galvanize fence in accordance with Mr. Dunstan Joseph's Plan.
- [87] Mr. Gajadhar's testimony agreed with the evidence of M.E. and G.A. as to how and why he carried out the survey. Under cross examination he agreed that his survey had extended 30 to 40 feet into the land of M.E. because of his inclusion of

the land of Edwin Edwards into the exercise. He said that had he not been trying to locate 5609 square feet of land for Edwin Edwards more likely than not there would have been no need to go 30 to 40 feet North of the Access Road to find the square footage purchased by G.A. By this he did not mean that he would not have had to go, he meant he said, that he would not have had to go as much as he had done on his survey plan.

- [88] He testified that sometimes Surveyors on a Plan may not mathematically come up with the square footage for the land in a Deed, and it was out of the norm to have exactly what is in the Deed. He said it was more unusual to give someone less than what they bought.
- [89] He admitted that his plan did not conform with the Registry Map Sheet and that the shape of Parcel 325 on his Survey Plan was different from the shape of Parcel 325 on the Map Sheet. He said that surveying was all about creating parcels.
- [90] He said he was not aware that Mr. Martyr had visited the land in question in 1998 and had recommended that pegs be placed there in accordance with Mr. Dunstan Joseph's Survey Plan. Had he been aware of this, he would have discussed it with Mr. Martyr he said.
- [91] He was unaware that in 1998 G.A. and M.E. in the presence of the Chief Land Surveyor and Land Registrar had agreed on a line. He also agreed that established boundary lines must be accepted and respected by subsequent surveyors. He admitted that he had not respected the Boundary placed by Mr. Dunstan Joseph's Survey.
- [92] He conceded that a plan prepared upon the recommendation of the Chief Land Surveyor and Land Register with the consent of adjoining land owners cannot be unilaterally by one of those owners set aside and superseded by that other Party's subsequent Survey Plan.

[93] He conceded further that as long as it is established that Mr. Dunstan Joseph's Plan was drawn up with the Agreement of Adjoining land owners, his Survey Plan cannot supersede it.

[94] He admitted that he pushed down part of M.E.'s galvanize by making a little opening. He explained that he had gone up into M.E.'s land because he was accommodating Mr. Edwin Edwards land and because of the dimensions on G.A.'s and E.F.'s Deeds of Sale since he stayed as near as possible to those dimensions. He admitted that sometimes what is stated in a Deed is inaccurate. He also told the Court that he was not quite aware of the Land Registration Act as to what should be done to do justice to Mr. Edwin Edwards at the time.

THE REPORT AND RECOMMENDATIONS OF THE COURT'S EXPERTS

[95] The Court appointed Mr. Joseph Modeste and Mr. Lester Martyr as Experts to assist the Court in determining how best to resolve the boundary disputes concerning Parcels 296, 325 and 326. Both Experts are former Chief Land Surveyors in the Survey and Mapping Department. Mr. Modeste has 30 years experience as a Licensed Land Surveyor, while Mr. Martyr has been a Licensed Land Surveyor for 20 years, and was also employed for 10 years as the Registrar of Lands. He is also a Barrister-at-Law. Their Report was filed on 26th March 2003.

[96] They have had lengthy discussions with the parties and their representatives at the locus, and having identified the main issues already discussed, they have reported on the following matters among others:

1. The 2nd Defendant has been advised that the size of the parcels of land shown on the Survey Plan ALR 1448B prepared by Mr. Dunstan Joseph on 29th April 1998. Reflects a shortfall in the entitlement due to the 2nd and 3rd Defendants. The 2nd Defendant G.A. considers this action presents an opportunity for the Court to

properly direct the re-establishment of the boundaries of parcels 325 and 326.

2. In respect of the 4th Defendant who has been advised of the legal status of his 'late' claim, the Experts are informed that Claimants are willing to enter into an arrangement with him regarding a portion of the land registered in 0036C296.
3. The Claimants are distressed over the uncertainty existing in the position of the southern and western boundaries of their Parcel 0036C296 among other things.
4. The Experts consider it remarkable that Mr. Gajadhar could undertake to establish boundaries of land based on claims of ownership made more than 10 years after the completion of the Land Registration and Titling Project. Although he may have had a genuine desire to assist the parties the Experts consider that he must bear part of the responsibility in this matter before the Court.
5. The following recommendations were made, having considered the concerns of all parties, representations made by Claimants, and exhibits.

"9.1 A re-survey of the parcels 0036C 325 and 0036C 326 must be undertaken in order to ensure that the size of the land parcels accord with the areas stated in the deeds of purchase held in the Land Registry in respect of the 2nd and 3rd Defendants. The areas are 9375 square feet and 10,000 square feet respectively. In undertaking the re-survey, the access road shown on . . . [Survey Plan ALR 1448 B] and where

applicable an extension thereof, must be maintained as the northern boundary of the parcels [according to the Diagram marked Ex M-7 submitted with this Report]. . .

- 9.2 The parcel of land, which is to be granted to the 4th Defendant, should be dismembered east of the location of parcel 326 and as directed by the Claimants. The size of this parcel of land must not exceed the 4th Defendant's entitlement under the Deed. See Exhibit M-7 for . . . diagram showing the location.
- 9.3 The 1st Defendant should be responsible for executing the re-survey of the parcels and for preparing a draft plan which must be accepted by all the parties prior to authentication of the plan by the Chief Surveyor.
- 9.4 The plans . . . [ALR 1448 B] and . . . [ALR 1478 R] should be declared to be void and without effect and the Court should order cancellation of the said plans by the Chief Surveyor."

FINDINGS

- [97] I do not agree with Learned Counsel Mr. Theodore that the present case raises the issue of Rectification of the Land Register under Section 98 of the Land Registration Act. As Learned Counsel Ms. Portland has pointed out, this was never pleaded by the Defendants.

- [98] Neither do I share Mr. Theodore's view that the 2nd and 3rd Defendants embarked on a strategy to deprive the Claimants of their land by inserting the 4th Defendant into the equation. I prefer to see it as a misguided and reckless attempt by Mr. Gajadhar to assist Mr. Edwin Edwards and G.A. and E.F. to obtain the full amount of the land they acquired under their Deeds and more, without reference to the law.
- [99] Having considered the submissions of Counsel and the recommendations of the Expert Witnesses appointed by the Court, I note that the recommendations and apparent preparedness of the Claimants to accommodate Mr. Edwin Edwards' peculiar situation accords in principle with Article 979 of the Civil Code and Section 119 of the Land Registration Act.
- [100] Article 979 states that **"He who receives what is not due to him, through error of law or of fact, is bound to restore it; or if it cannot be restored in kind, to give the value for it. If the receiver be in good faith, he is not obliged to restore the profits of the thing received."**
- [101] Section 119 of the Land Registration Act states that **"Any matter not provided for in this Act or in any other written law in relation to land leases or hypothecs registered under this Act and interests therein shall be decided in accordance with the principles of justice, equity and conscience."**
- [102] While the 4th Defendant has not counter claimed for any relief, nevertheless the overriding objectives of the Rules dictate that I deal justly with this case by saving expenses, and dealing with as many aspects of the case as is practicable on this occasion.
- [103] In my opinion therefore Justice will be best served for all the Parties by adopting the recommendations 9.1, 9.2, 9.3 and 9.4 of the Experts set out at paragraph 96 above.

[104] Learned Counsel Mr. Theodore has urged me to award full costs to the Claimants, having regard to the fact that they have throughout the conduct of this case made every effort to compromise and settle the matter, while the Defendants have refused to compromise.

CONCLUSIONS

[105] **THE COURT HEREBY ORDERS:**

- (i) A re-survey of the Parcel 0036C-325 and Parcel 0036C-326 in the Land Register must be carried out and the approximate size of the area of each Parcel should be 9375 square feet for Parcel 0036C-325 and 10,000 square feet for Parcel 00366-326.
- (ii) In undertaking the re-survey the access road shown on Survey Plan ALR 1448B and where applicable an extension thereof must be maintained at the northern boundary of the said parcels according to the Diagram Marked Ex M-7 appended to the Court Experts' Report filed on 26th March 2003.
- (iii) The Claimants shall enter into an arrangement with the 4th Defendant to grant him a portion of the land registered as Parcel 0036C-296 to be dismembered east of the location of Parcel 0036C-326 and as directed by the Claimants, and the size of this Parcel should not be more than 3360 square feet, and the location shall be in accordance with Ex M-7 appended to the Court Experts' Report. The Transfer Costs to be borne by the 4th Defendant.
- (iv) The 1st Defendant shall execute the re-survey of the parcels including the Parcel to be granted to the 4th Defendant, prepare a draft plan which must be accepted by all the parties prior to authentication of this Plan by the Chief Land Surveyor, and the Cost shall be borne equally between the 4 Defendants.

- (v) The 4th Defendant shall vacate the land he presently occupies which is a part of Parcel 0036C-325 as soon as the Claimants have granted the land to him, after it has been surveyed.
- (vi) The Survey Plans ALR 1448B and ALR 1478R are hereby declared to be void and ineffectual and are to be cancelled by the Chief Land Surveyor forthwith.
- (vii) The Survey Plan referred to at paragraph (iv) of this Order to be filed in the Land Registry by the Claimants.
- (viii) The Defendants Nos. 1,2,3 and 4 shall pay to the Claimants the sum of \$14,000 for Prescribed Costs Pursuant to PART 65.5 (2) of CPR 2000 and APPENDIX B, to be borne equally between the 4 Defendants.

Dated this 28th day of February 2007

**OLA MAE EDWARDS
HIGH COURT JUDGE**

