

ST. VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2008/020

BETWEEN:

GERSHON ROBERTSON

Appellant

and

[1] BALDWIN KING

[2] HARIETTE RICHARDSON

Respondents

Before:

The Hon. Mde. Ola Mae Edwards

The Hon. Mr. Albert Redhead

The Hon. Mr. Jefferson Cumberbatch

Justice of Appeal

Justice of Appeal [Ag.]

Justice of Appeal [Ag.]

Appearances:

Mr. Emery Robertson for the Appellants

Mr. Andrew Cummings QC for the Respondents

2010: November 24;

2011: March 14.

Civil Appeal – Unregistered land – Law governing Succession and Settlement under an 1856 will – life interest in unregistered land to named children with gift over to named grandchildren for their heirs and assigns forever in fee tail – whether great grandson of testator in possession of the land for over 40 years can lawfully dispose of all of the land by his will – ss. 5(2) and 30 of the Administration of Estates Act Cap. 377 of the Laws of St Vincent and the Grenadines – whether the surviving executor of this great grandson can validly sell all of the land to 1st respondent without a court order – subsequent sale of a portion of the land to 2nd respondent – purchasers having constructive notice - whether appellant a great great great grandson of testator under the 1856 will can obtain equitable relief and recover the land from the purchasers – Section 19 and paragraph 9 of the Schedule Part 1 of the Limitation Act Cap. 90 of the Laws of St. Vincent and the Grenadines – whether a beneficiary under a settlement can set up a claim for adverse possession against other beneficiaries – defence of laches and acquiescence – costs

The testator, William Robertson was the lawful owner of unregistered land lots 16, 17, 31, 32 and 33 situate at Little London, St. Vincent and the Grenadines. In 1856, by his last will and testament the testator devised these lots to his wife for life. This 1856 will stated that after her death the said lots should devolve to his four named children for their natural lives, with a gift over to his four named grandchildren for themselves, their heirs and assigns forever in fee tail.

Over 90 years after the death of William Robertson, a great grandson of the testator named Edward Robertson, purportedly disposed of the lands in his will dated September, 1947 by devising to his wife a life interest in the lands, with an absolute gift over to his immediate family members. Edward occupied the lands for over 40 years without any proven dispute or challenge from other descendants of William Robertson. Edward's will falsely stated that these said lands devolved to him as heir at law by the last will and testament of his great grandfather William Robertson. Edward appointed his wife and Mr. Joseph Crick as his executor, and on his death the 2 executors obtained probate of the will in January, 1948. Edward's wife died in 1969. The 1st respondent purchased the lots in 1996 through a real estate agent, and the surviving executor Mr. Crick conveyed the lands to the 1st respondent by a Deed of Conveyance. It is not clear who received the proceeds of sale. In April 2003 the 1st named respondent after mutating the land, sold and conveyed a lot, with an area of 5,414 square feet to the second respondent.

In the court below the appellant who is the great great great grandson of William Robertson claimed that he and his predecessors in title were the lawful owners of the lots and sought orders against the 1st and 2nd respondents. Both respondents pleaded that they were bona fide and lawful owners of the land, while contending that their predecessors in title were in long, continuous and unmolested possession of the land; and any claim, title alleged real or perceived by the claimant was wholly extinguished and/or barred by the effluence of time pursuant to the provisions of the Limitation Act. The trial judge held that by 1996 when Mr. Crick executed the conveyance in favour of the 1st respondent Mr. Baldwin King, the paper title of William Robertson would have long been vacated; and that Mr. Baldwin King got a valid title and so did the 2nd respondent Ms. Hariette Richardson.

The trial judge dismissed the appellant's suits and ordered him to pay costs of \$3,000.00 and \$4,000.00 to be paid to the 1st and 2nd respondents respectively. The appellant appealed the decision of the trial judge.

Held: allowing the appeal and setting the decision of the trial judge aside with costs to the appellant on each of the claims in terms of the following order:

1. (i) It is hereby declared that lots 16, 17, 31, 32 and 33 situate at Little London, in the State of St. Vincent and the Grenadines are the property of the heirs/descendants and/or beneficiaries of William Roberts' named grandchildren Robert Alexander Robertson, Caroline Medicia, Charles Robert Sinclair, William Sinclair and Ann Robertson, under the will of William Robertson.

- (ii) The respondent Baldwin King shall pay over to the Registrar of the High Court for the benefit of the heirs/ descendants and/or beneficiaries referred to at paragraph (i) of this order, the sum of \$27,070.00 less the stamp duty, transfer tax, and legal costs he paid in connection with the sale, representing the net proceeds together with interest thereon at 4% per annum from April 30th 2003.
- (iii) Upon the Registrar receiving payment of the net proceeds together with the interest thereon the respondent Hariette Richardson may apply to the High Court for an order declaring her to be the lawful owner of the said land.
- (iv) The respondent Baldwin King is entitled to be refunded the purchase price of \$57,000.00 which he paid for the said lots 16, 17, 31, 32 and 33 together with interest thereon at 4% per annum by the heirs/descendants and/or beneficiaries referred to at paragraph (i) of this order.
- (v) The consolidated claims are remitted to the High Court for the Court to give directions so as to ascertain and determine who are the persons who answer the description as heirs/descendants and/or beneficiaries referred to at paragraph (i).
- (vi) The High Court shall give directions for the respondent Baldwin King to supply proper accounts to the court relating to his dealings with, expenditure on, developments of and improvements to the said lots 16, 17, 31, 32 and 33 since 18th March 1996, and the net proceeds of sale for any other mutated parcels sold from the said land shall be paid over to the Registrar of the High court for the benefit of the said heirs/descendants and/or beneficiaries.
- (vii) The remaining land and the improvements done to the land are to be valued by an assessor appointed by the court, and the respondent Baldwin King is entitled to compensation approved by the court for any proven improvements to the land from the said heirs/descendants and/or beneficiaries.
- (vii) It is hereby declared that the Deed of Conveyance registered as No. 982 of 1996 dated 18th March 1996 is null, void and of no effect.
- (ix) The High Court is to determine and give directions concerning the respondent Baldwin King delivering up possession of the remaining portion of lots 16, 17, 31, 32 and 33 at Little London.
- (x) The costs in the court below are to be prescribed costs to be agreed on or ordered to be paid pursuant to CPR 65.5(2)(a) in respect of each claim.

- (xi) The costs in the appeal to be agreed on by each respondent and the appellant, otherwise to be two thirds of the prescribed costs in the court below on each claim.
2. That Edward Robertson was not an heir-at-law under the will of William Robertson. However, as Edward was the son of a grandson Robert Alexander Robertson who was a named beneficiary under the settlement in the will of William Robertson, Edward would have had an inheritance under the settlement.
 3. So far as entitlement to share in the estate of William Robertson is concerned, the appellant is not in a better position than Edward, neither was Edward in a better position than the appellant. Edward would not be entitled to all of the lots of land where there were other beneficiaries; therefore he was not competent to dispose of these lots as he did under his will.
 4. Further, there was no evidence that anyone apart from the Robertsons were in possession of the land before Mr. Crick executed the conveyance to the 1st respondent. A beneficiary, under a settlement cannot set up a claim for adverse possession against another beneficiary by virtue of paragraph 9 of the Schedule Part 1 of **The Limitation Act** Cap. 90.
 5. Edward had not lawfully barred the rights of the several other concurrent heirs in tail up to the time of his death in September 1947; neither would his executor Mr. Crick be able to do so in 1996 without a court order; despite sections 5(2) and 30 of the **Administration of Estates Act** which permits a surviving executor to convey land without an order of the Court.
 6. Consequently, the conveyance of the land by Mr. Joseph Crick to the 1st respondent Mr. Baldwin King was of no effect. No title passed to Mr. King and the sale to Mr. King was void. Mr. King therefore could not pass a valid title to the second respondent Ms. Hariette Richardson.
 7. Each respondent is fixed with constructive notice that the land was not lawfully conveyed under his/her respective Deed of Conveyance. The respondents are therefore not protected by their plea that they were bona fide purchasers for value without notice.

Applying principles in **Halsbury's Laws of England** (4th edition) Vol. 42 at paras 147 to 154 and Vol. 16 paras 3111, 1313, 1322.

8. The defence of laches is not maintainable against the appellant on the facts; and in any event laches is only allowed where there is no statutory bar. The appellant is entitled to the 12 years statutory bar period under section 17 of the **Limitation of Action Act** Cap. 99 which would operate from the date the 1st respondent Mr. King acquired and entered into possession of the land.

9. Although the other elements to establish the plea of acquiescence have been proven, protection cannot be afforded to the respondents on grounds of acquiescence because there is no proof that the appellant stood by and did nothing after he became aware of Mr. King and Ms. Richardson's mistaken belief that they had a valid legal title to the land.

Applying principles in **Halsbury's Laws of England** (4th edition) Vol. 16 paras 1473 to 1476.

JUDGMENT

- [1] **REDHEAD, J.A. [AG.]:** The appellant, Gershon Robertson, is about 68 years old. In 2004 he filed claims against the respondents, in which he sought declarations and orders against them. He claimed that he and his predecessors-in-title are the lawful owners of lots 16, 17, 31, 32 and 33, situate at Little London, St. Vincent and the Grenadines.
- [2] In respect of the first-named respondent, he sought the following orders:
 - (i) An order restraining him from entering upon the property of the late William Robertson as bequeathed to his grandchildren, their heirs and assigns.
 - (ii) An order that Deed No. 1520 of 2003, is null, void and of no effect.
 - (iii) An order that this respondent pay over forthwith to the appellant the sum of \$125,675.00, being the value of lands unlawfully sold in respect of lots 16,17, 31, 32 and 33.
 - (iv) An order that this respondent forthwith deliver up possession of the remaining lands of the estate of William Robertson, deceased, recorded in Liber for the year 1857 at pages 497- 498.
 - (v) Damages for trespass.
 - (vi) Costs.

- [3] As against the second respondent:
- (i) An order restraining her from entering upon 5,414 square feet of land situate at Little London, the property of William Robertson, deceased, as bequeathed to his grandchildren, their heirs and assigns forever.
 - (ii) An order declaring that Deed No. 1520 of 2003 is null, void and of no effect.
 - (iii) An order that the respondent deliver up possession of 5,414 square feet of land situate at Little London as described in the schedule of Deed No. 1520 of 2003 or pay (to the appellant) its value being \$27,020.00.
- [4] The learned trial judge dismissed the claimant's suits and ordered him to pay costs of \$3,000.00 and \$4,000.00 to the first and second respondents respectively.
- [5] The appellant is dissatisfied with the decision of the learned trial judge and appeals to this court. Eleven grounds of appeal were filed.
- [6] Learned counsel for the appellant, Mr. Robertson, argued grounds 1, 2 and 11, 3 and 4, 5 and 6 and 9 and 10 together.
- [7] Before I embark upon the consideration of the grounds of appeal, I am of the view that for the sake of clarity and understanding of the issues, it is necessary to encapsulate the facts in a nutshell which give rise to the present situation.
- [8] William Robertson, by his last will and testament dated 20th January 1856, devised to his wife, Catherine Robertson all of the residue of his property both real and personal for her life. After her death, the said residue of both real and personal are to devolve on his four children namely, John, William, Mary Ann and Elizabeth, for their natural lives, with a gift over to his named grandchildren, Robert Alexander Robertson, Caroline Medicia, Charles Robert Sinclair, William Sinclair and Ann Robertson progeny of his children, for themselves, their heirs and assigns forever in fee tail.

- [9] In 1857, by Deed of Indenture, lots No. 16, 17, 31, 32 and 33 of lands situate at Little London were conveyed to Catherine Robertson, in keeping with the terms of the will.
- [10] By a will dated September 1947, Edward Robertson, the great grandson of William Robertson, devised to his wife, Adriana Robertson, a life interest in lands situate at Little London, St. Vincent, numbered 16, 17, 31, and 32, alleging in his will that these said lands devolved to him as heir at law by the last will and testament of William Robertson, dated 20th January 1856.
- [11] By that said will Edward Robertson appointed as his executor, his wife Adriana Robertson and Joseph Crick. Adriana Robertson and Joseph Crick subsequently obtained probate of the will. Thereafter Adriana Robertson died on 9th June 1969.
- [12] In 1996 Baldwin King bought lots 16, 17, 31, and 32 of Little London, originally of the estate of William Robertson. These lots were conveyed to him by the sole executor, Joseph Crick.
- [13] On 30th April 2003, Baldwin King, the first named respondent conveyed to the second respondent, Hariette Richardson 5414 square feet of land at Little London, St. Vincent, part of the original estate of William Robertson.
- [14] The issues to be determined in this appeal, as distilled from the pleadings, documentary and oral evidence, submissions and arguments advanced are:
- (a) Whether lots 16, 17, 31, and 32 of Little London devolved to Edward Robertson as heir at law, by the last will and testament of William Robertson, as he, Edward Robertson, claimed in his last will and testament?
 - (b) Was Edward Robertson's bequest to his wife, Adriana Robertson, valid?
 - (c) If valid could the sole executor, Joseph Crick, validly transfer land under the will of Edward Robertson to Baldwin King, the first named respondent?
- and

(d) Did King pass a valid title to the second named respondent Harette Richardson?

[15] We deal now with grounds 1, 2 and 11 of the appeal.

[16] Learned counsel for the appellant in his written submissions argued that the documentary evidence established that William Robertson was the owner of lots 16, 17, 31, 32 and 33 at Little London. He devised by his will and he created a settlement. Effect to his will was given by the Honourable Samuel Alves to his widow Catherine Robertson and his grandchildren and the said was recorded by deed.

[17] Learned counsel argued that William, the testator, never mentioned Edward in his will as a child, nor was any document produced to show that Edward was the first born child of William and was therefore the heir-at-law of William. We make the observation that no such documents could have been produced because, in fact, Edward Robertson was not the heir-at-law to William Robertson. On the contrary, the respondents in reliance on the judgment of the learned trial judge advanced the argument in their written submissions that:

"In the unproven and very unlikely event that the appellant/claimant had even a scintilla of connection to the lands, any claim of the appellant/claimant was long extinguished, rendering him incapable of mounting the remotest of challenges whatsoever in support of his claim. In fact the appellant/claimant could not prove the slightest possession of the land in question. In dismissing the appellant/claimant's claim, the learned trial judge found unequivocally that the respondents/defendants were in possession through their predecessors-in-title by the doctrine of adverse possession as adumbrated in the Limitation Act, Chapter 90 of the Laws of St. Vincent and the Grenadines and the paper title is of no moment in the exercise."

[18] By that submission the respondents are not saying that Edward Robertson was heir- at-law, but he obtained title by virtue of being in adverse possession.

[19] The judge found as a fact that the respondents were in possession through their predecessors-in-title by reason of the doctrine of adverse possession. The

respondents through their counsel, Mr. Andrew Cummings QC, in reliance on the judgment, argued that, “the judge’s finding of law and facts are not to be disturbed in any way.”

[20] In reliance on this argument, learned counsel for the respondents, Mr. Cummings QC, referred to many authorities including the following: **Grenada Electricity Services Ltd. v Isaac Peters**¹ and **Defour et. al v Helenair Corporation**².

[21] The authorities cited, deal with the approach a Court of Appeal should follow in determining whether or not it would set aside the findings of facts by a trial judge who had the opportunity of seeing and assessing the demeanor of witnesses who appeared before him.

[22] In **Grenada Electricity Services**, Sir Dennis Byron, Chief Justice as he then was, referred to the **Eastern Caribbean Supreme Court Act**³ and said:

“The statute thus confers power on the court of Appeal to find facts and to draw inferences. The authorities relied on discussed the principles on which appellate court would reverse the findings or fact of a trial judge. It is clear that this power is exercised in different ways according to the circumstances. The famous starting point which the respondent emphasized is that an appellate court will usually be reluctant to differ from the finding of a trial judge where his finding turned solely on the credibility of one or more witnesses. This however includes an important limitation and requires the court to draw a distinction between a finding of specific facts and finding of fact which in reality is an inference from facts specially found. To use different words the court must distinguish between the perception and evaluation of facts. It is in the finding of specific fact, or the perception that the court is called on to decide on the basis of the credibility of witnesses. When this is the position, an appellate court must exercise caution and have a rational basis for differing with the trial judge who had the advantage of observing the witnesses in the process of giving the testimony. On the other hand the court may have to consider a situation where what is in dispute is the proper inference to be drawn from facts, or in other words the evaluation of facts. In such cases the appellate court is in as good a position to draw

¹ Civil Appeal No. 10 of 2002 Grenada.

² (1996) 52 WIR at 188.

³ Cap 336 Section 35.

inferences or to evaluate as the trial judge.” (See also **Benmax v Austin Motor Co. Ltd**⁴).

- [23] We do not agree with the contention of learned counsel for the respondents that the finding of law by a trial judge ought not to be disturbed or overturned. We know of no such legal concept. When it comes to the application and interpretation of the law, a higher court is in as good or better position in this regard.
- [24] As a matter of fact, in our jurisprudence a higher court is eminently placed to decide on the interpretation, application and relevance of the law and may agree, disagree or overrule a lower court. This, a higher court does with regularity.
- [25] The issue whether or not a claimant obtains possession of one’s land by reason of the doctrine of adverse possession is a legal issue. This court is therefore well placed to disturb or overturn the learned trial judge’s finding on that issue.
- [26] Both respondents in support of their claims to the land rely on the doctrine of adverse possession.
- [27] The first named respondent, Baldwin King, in his defence said he was a bona fide and lawful owner of the land. He asserted that Edward Robertson was in long, undisturbed and continuous possession. He further stated that he, Edward Robertson, obtained a good and proper title from the estate of William Robertson (deceased).
- [28] The second-named respondent, Hariette Richardson, in her defence at paragraph 7 thereof stated: “...the defendants predecessors in title were in long, continuous and unmolested possession of the land and any claim, title alleged, real or perceived by the claimant was wholly extinguished and/or barred by the effluence of time pursuant to the provisions of the **Limitation Act**⁵.”

⁴ (1955) 1 AER 326.

⁵ Cap 90 of the Laws of St. Vincent and the Grenadines.

- [29] In paragraph 85 of the judgment, in considering the issue of adverse possession, the learned judge said that he did not think that King was relying on his own long and continuous possession but rather on that of Edward Albert Robertson.
- [30] In paragraph 86, the learned trial judge said that Edward Albert Robertson is a couple of generations ahead of the claimant. The claimant himself said Edward was the son of Robert Alexander Robertson and therefore the brother of the claimant's grandfather, Berthold Robertson.
- [31] The learned trial judge opined that the claimant is not in a position to say that Edward Albert was never in possession. When Edward Albert died in 1947 the claimant would have been just about five years old.
- [32] We make the observation that the learned trial judge was devoting his attention solely on the question of adverse possession which was not the real issue in this case.
- [33] At paragraph 87, the learned judge said that Edward Albert Robertson was the great grandson of William Robertson. The claimant was the great great great grandson. On 1st September 1947, Edward Albert Robertson made his will in which he stated that his lands in Little London were numbered 16, 17, 31 and 32. The important question that must be decided - Were these parcels of land Edward's? By what means did he acquire them? If they were not in fact solely his then he could not have legally disposed of these lots by his will.
- [34] The learned judge concluded at paragraph 48 of the judgment:
- "Whether or not he [Edward Albert Robertson] was heir at law to William Robertson as he said, he was in possession of those 'worldly possession wherein it had pleased Almighty God to bless him'. Edward died possessed of the lands after which possession was traced to his wife Adriana and Joseph Crick, his two executors under his will. By 1996 when Crick executed the conveyance in favour of Baldwin King the paper title of William Robertson would have long been vacated."

- [35] The learned judge then held that Baldwin King got a valid title and so did Hariette Richardson.
- [36] Learned counsel for the appellant in his written submissions argued that the learned trial judge failed to have directed his mind to the principle that a person cannot give away that which he never had and vice versa, that he could not sell that which he never had, expressed in the latin maxim **Nemo dat quod non habet**.
- [37] Mr. Robertson, learned counsel for the appellant, argued that the issue is whether Edward became entitled to the lots by adverse possession. He contended that Edward Robertson stands or falls by the strength of his title. He argued that there was no issue of adverse possession in this case to invoke the **Limitation Act**. He contended that the learned trial judge failed to properly appreciate and evaluate the law and evidence in this case as it stands on the respective paper titles. Learned counsel referred to the following authorities: **Laws v Telesford**⁶ and **Asher v Whitlock**⁷.
- [38] In **Luella Mitchell et al and Morris Jones**⁸, this was a case involving an intestate estate, however the principles enunciated in the dissenting judgment of Ola Mae Edwards, J.A. in that case are applicable to the issues in the case at bar. In **Luella Mitchell**, Ola Mae Edwards, J.A. at page 18 paragraph 35 applying the reasoning in **Earnshaw v Hartley**⁹ said:

"In that case no right of action could accrue to the presumptive trustee or beneficiaries of the estate of Cornelius Jones as against another beneficiary; and any possessory title claimed to the land by any beneficiary of Cornelius Jones's estate while the estate is unadministered must be defeated by reason of paragraph 9 of the schedule part 1 of the Limitation Act Cap 90".¹⁰

- [39] We now set out the schedule to part 1 of the **Limitation Act** section 9:

⁶ 1874-1888 AER reprint p.1305 per Lord Selborne.

⁷ 1865 LRGB.

⁸ Civil Appeal No. 16 of 2006 St. Vincent and the Grenadines.

⁹ (2002) Ch. 155.

¹⁰ Laws of St. Vincent and the Grenadines.

“Where settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale (not being a person solely or absolutely entitled to the land or the proceeds) no right of action to recover the land shall be treated for the purposes of this act as accruing during that possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale”.

- [40] Simply put a beneficiary under a settlement cannot set up a claim for adverse possession against another beneficiary.
- [41] Was Edward Albert Robertson a beneficiary under the settlement created by the will of William Robertson? By his last will and testament William Robertson devised in part, all the residue of his personal and real property to his wife Catherine. After her death the said residue of her property both real and personal are to be devolved on his four named children John, William, Mary Ann and Elizabeth with a gift over to his named grandchildren Robert Alexander Robertson, Caroline Medica, Charles Roberts Sinclair, William Sinclair and Louise Ann Robertson progeny of his children for themselves their heirs and assigns forever in fee tail.
- [42] The learned trial judge at paragraph 86 said that the claimant himself said that Edward was the son of Robert Alexander.
- [43] Learned counsel for the appellant contended in his skeleton arguments that William never mentioned Edward in his will as a child nor was any document produced showing that Edward was the first born child of William and was therefore the heir at law of William.
- [44] Learned counsel argued that it follows that in the absence of that the respondents have failed to prove that Edward did in fact inherit from William.
- [45] We agree that Edward Robert was not the heir-at-law of William Robertson. However, having regard to the settlement under William Robertson's will he would have had an inheritance under the settlement because he was the son of a

grandson, Robert Alexander Robertson who was named in the will and under the settlement had an inheritance.

[46] The appellant is laying claim to lots 16, 17, 31, 32 and 33 of these lots on the basis that:

“My great great great grandfather William Robertson owned several lots of land at Little London in the state of St. Vincent and the Grenadines under and by virtue of a Deed found in Liber for the year 1857 at pages 497-498. My ancestors settled the land upon their children for life and after their deaths to their children and ultimately devising same to named great great grandchildren of whom I am one.”

[47] So far as entitlement to share in the estate of William Robertson is concerned, the claimant is not in a better position than Edward Robertson neither is Edward Robertson in a better position than the claimant.

[48] When, therefore, Edward by his will purported to devise to his wife a life interest in “my lands” situated at Little London and numbered 16, 17, 31 and 32 devolved unto him as heir-at-law by the last will of William Robertson; the lots were not his to give. Even if Edward Robertson was entitled to share in the estate of William Robertson, he was not entitled to it in its entirety, that is, lots 16, 17, 31 and 32 if there were other beneficiaries. The bequest of Edward Robertson to his wife was therefore an invalid one.

[49] As Chief Justice Wooding observed in **Richards v Fabien**¹¹:

“...I take the view and my Lords both agree with me that statement in the will is not proof that he had owned those premises on that date or at any other time. It is always competent in the sense of factually competent [in that the testator can say what he wishes in his will] not legally competent for anybody to claim by writing in his will that he owns some property even though he does not own it.”

¹¹ (1964) 7 WIR 169 at 172 See also Williams on Wills 3rd edition at page 30: The will can only dispose of property or an interest in property belonging to the testator at the time of his death...Any disposition of property in which the testator has never had an interest...must fail.

Even if Edward Robertson was to share in the estate of William Robertson, he would not be entitled to all of it. He would therefore, not be competent to make the bequest which he made to his wife.

[50] By his will Edward appointed his wife and Joseph Crick as executors of his estate. Edward Robertson's wife died on 9th June 1969.

[51] On 18th March 1996, the sole surviving executor of the will of Edward Robertson purported to sell by Deed of Indenture 982 of 1996, 3 acres, 2 roods, 17 poles of land formerly part of the estate of William Robertson.

[52] It follows therefore that the transfer by Joseph Crick to Baldwin King was of no effect and no title passed to Baldwin King. It means therefore that the purported sale to Baldwin King was void.

[53] On 30th April 2003, Baldwin King transferred to Hariette Richardson 5,414 square feet of the land which was purportedly transferred to him by Joseph Crick. Baldwin King could not pass a valid title to Hariette Richardson, the second named respondent because King did not have a valid title. It follows therefore that the purported transfer from King to Richardson was also invalid.

[54] Learned counsel for the respondent, Mr. Cummings QC, submitted that there are troubling aspects of this case insofar as the findings and the orders requested by the claimant of this case. In the first case the claimant himself could not be solely entitled to lots 16, 17, 31 and 32 as he is claiming just as Edward Robertson was alleging that he was solely entitled to these lots having regard to the settlement made by William Robertson under his will. We agree.

[55] The problem as we see it is that Gershon Robertson brought this claim in his own name. Surely, in our view, there must be others entitled under the settlement of William Robertson. Who are they? This court has no idea having regard to how this case was argued below.

- [56] From the evidence of Joseph Crick which was supported in part by the first named respondent and was not addressed in the court below, it is quite clear that the executor Joseph Crick did not receive any money on the transfer of the lands in question to Baldwin King.
- [57] It seems to us on the evidence of these two deponents which remained unchallenged, that the lands were advertised for sale and sold by the real estate agent, Rapid Result Realty. Joseph Crick testified between 1947 and 1996, Berkley Samuel was in charge of the land in question. He said that Berkley Samuel was a grandson of Edward Robertson.
- [58] Another troubling aspect of this case is that by his will Edward Robertson named his grandchildren as Carlton, Hilton, Randolph and Cynthia Robertson, all resident in Trinidad and Tobago. Berkley is not mentioned as a grandchild. In addition, Edward Robertson decreed "In the absence of these grandchildren I give the said lands above mentioned to my three nephews Robert, Hannibal and Jaban Robertson, sons of my brother Clement Robertson."
- [59] However, notwithstanding this troubling aspect of the case, it is an irresistible conclusion that Berkley Samuel "grandson" of Edward Robertson caused the lands to be advertised and sold by the real estate agent, Rapid Result Realty. It is also an irresistible conclusion that he, Berkley may have received the purchase price paid by Baldwin King.
- [60] Baldwin King could not have been a bona fide purchaser without notice, as he would have had constructive notice because, if diligent searches were carried out, the true position would have been revealed i.e. Edward Robertson would not have had legal title to the lands – **Kingsworth Co. Ltd. v Tizard**¹².
- [61] In addition, there is also the allegation, which Baldwin King denied that Westfield Robertson alias Jerico was chased off the land by Baldwin King. However, there is

¹² (1986) 2 AER 54.

evidence on oath given by Jonathan Samuel that Jerico worked the land for 20 years.¹³

[62] Hariette Richardson had actual notice that the land in question did not belong to Baldwin King. In September 2004 the solicitor for Gershon Robertson wrote to Ms. Hariette Richardson saying in part so far, as is material:

"I wish to put you on notice that there is no lawful legal estate vested in Mr. Baldwin King which he can legally dispose of to you and you are respectfully requested to cease the building you are in the process of constructing on my client's land.

Should you not cease the building you are liable to lose all your monies invested both in the land purchased and the building."

[63] This was of course after she had purchased the land from King in 2003, but certainly before the construction of the dwelling house which became part of the land. In any event Ms. Richardson, just as Baldwin King, would have had constructive notice that Edward Robertson, from whom King bought, did not have proper title. It seems that Jonathan Samuel was written in the same vein as Ms. Richardson. As a result he did not proceed with his proposed construction.¹⁴

[64] It appears that the other three persons who purchased lots from Baldwin King did not proceed with any construction on the lots they bought from King. This may be the reason that they were not made parties to the action.

[65] On 15th December 2003, solicitor for Gershon Robertson wrote to the Secretary, Physical Planning and Development Board, the letter says in part:

"Mr. Robertson is the great grandson and owner of an estate called Little London, a part of which is allegedly sold by Baldwin King to Ms. Richardson. Mr. King has been written to regarding this estate and to date has done nothing. In order to avoid a series of litigation, I respectfully ask you to withhold the granting [planning] permission until this matter is sorted out."

[66] It is apparent that no heed was paid to this request because Ms. Richardson constructed a dwelling house on the land.

¹³ Page 179 Transcript.

¹⁴ See transcript page 179.

- [67] To complicate matters further, Ms. Richardson on 18th June 2004, took out a second mortgage (the first being for \$26,000.00) in favour of the General Employees Cooperative Credit Union for the sum of \$150,000.00.
- [68] As stated above Ms. Richardson did not have a proper title as no legal estate passed to her from Baldwin King as the deed was null and void.
- [69] The evidence is that after Edward's death, Berkey Samuel was in charge of the lands in question from 1947 to 1996, some 49 years. Edward Robertson would have been in possession for an indeterminate number of years.¹⁵
- [70] There is no evidence that anyone apart from the Robertson's were in possession of the lands in question before the purported sale to Baldwin King. It is therefore safe to conclude that the Robertsons were always in possession of lots 16, 17, 31, 32 and 33 at Little London.
- [71] We are fortified in this conclusion that up to 1996 when Berkley Samuel "a Robertson" purported to transfer to King, the land was in the Robertson's possession.
- [72] We turn now to look at the orders sought by the claimant. We have determined that Harette Richardson was not a bona fide purchaser without notice. But having regard to the circumstances of this case, it would not be equitable to grant an order for trespass against her which in effect would exclude her from her home. In addition, the building society has an interest in the house having regard to the fact that it advances \$176,000.00 to her towards the acquisition of the property.
- [73] The \$27,070.00 paid to Baldwin King by Harette Richardson should be paid over by him to the dependents of William Robertson. Interest on that amount at the rate of 4 per cent per annum from 30th April 2003, until repayment.

¹⁵ Joseph Crick's evidence page 47 Record of Appeal.

- [74] The \$57,000.00 paid by Baldwin King should be repaid to Baldwin King with interest at the rate of 4 per cent per annum from 1st April 1996, until repayment.
- [75] The learned trial judge did not make a finding as to who are the descendants of William Robertson. This case should be remitted to the High Court of St. Vincent and the Grenadines for a determination as to who are the surviving descendants of William Robertson.
- [76] I have had the opportunity to read the draft judgment of my sister Edwards, J.A. and I agree with her conclusions and the result of the appeal as stated in her order.

Albert Redhead
Justice of Appeal [Ag.]

- [77] **EDWARDS, J.A.:** I agree with the reasoning and conclusions of my learned brother Redhead, J.A. [Ag.]. I wish to add my views on some of the other matters and issues that were raised in the pleadings and submissions of counsel for the parties.
- [78] Although learned counsel Mr. Robertson referred to the **Real Estates Devolution Act**, Cap. 87 in his submissions, at the time when Mr. Crick purportedly sold the land to Mr. Baldwin King the **Administration of Estates Act** Cap. 377 was in force as the governing law for conveyances by executors.¹⁶
- [79] Section 5(2) of Cap 377 states:

"Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part shall not, save as otherwise provided as respects trust estates including

¹⁶ See section 68(2) of Cap. 377 (Act No. 39 of 1989) which states: "Where before the 27th December, 1989 anything has been done in accordance with the provisions of – (a) the Real Estates Devolution Act; (b) the Land Charges Act; (c) the Administration of Estates Act [Cap. 109 of 1926]; (d) the Intestates Estates Act, 1947; (e) the Real Property Liability Act; (f) any law applicable in Saint Vincent and the Grenadines including the Administration of Estates Act, 1925 of the United Kingdom Parliament, or in accordance with any probate or other rules relating to the administration of estates, such thing shall be deemed to have been done under the corresponding provisions of this Act and may be continued in accordance with the provisions of this Act and any rules made or applicable hereunder."

settled land, be made without the concurrence therein of all such representatives or an order of the Court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors **for the time being**, without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein."

[80] Section 30 of Cap. 377 also states:

"Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors **for the time being** and shall be as effectual as if the persons named as executors had concurred therein."

[81] Consequently, the executor Mr. Crick would not have had to obtain permission from the court on the death of the other executor Adriana Robertson, to convey the land to Mr. Baldwin King, had the terms of William Robertson's will and the applicable law permitted the lots to be sold to Mr. King. However, we are dealing with a settlement under a will and since Edward had not lawfully barred the rights of the several other concurrent heirs in tail up to the time of his death, in September 1947, neither could his executor Mr. Crick do so in 1996 without a court order.

The plea of bona fide purchasers for value without notice

[82] Both respondents pleaded that they were bona fide purchasers for value without notice that the land was not lawfully conveyed under the two deeds in question. However, the law is that where a claimant is asking for substantial relief in equity and the claim can be characterized as a claim seeking to establish an equitable estate or interest, then, the plea cannot avail a defendant purchaser.

[83] The law is stated in **Halsbury's Laws of England**¹⁷ as follows:

"So, indeed, ... [where] substantial relief is asked for in equity, the plea is bound to be rejected, for its acceptance would mean that a bona fide purchaser for value could obtain a title from a vendor without title" [At

¹⁷ Volume 16 (4th edition) at paragraph 3111 footnote 4 and paragraph 1313.

paragraph 1313]. “The plea of purchaser for value without notice still avails against a plaintiff who is not seeking to establish a claim to an equitable estate or interest, but merely to enforce an equity, such as an equity to set aside a conveyance.”

[84] At paragraph 1311 footnote 4 the historical changes in the availability of the plea are described and summarized as follows:

“The course of the practice as to the plea was as follows: it was at first good against equitable claims; then against both legal and equitable claims; then against legal claims under the auxiliary jurisdiction only, and equitable claims; and ultimately only against legal claims under the auxiliary jurisdiction; but for some purposes it continued to be effective against legal claims under the concurrent jurisdiction; and it also remained effective against equities as distinguished from claims to an equitable interests”

[85] Having examined the nature of the two claims brought by the appellant I note that the claim against Baldwin King in claim No. 501 of 2005 was for:

1. A declaration that the claimant and his predecessors in title are the lawful owners of lots 16, 17, 31, 32 and 33 situate at Little London.
2. A declaration that the defendant is not entitled to enter or be in occupation and/or possession of any lands belonging to or forming part of the estate of William Roberston deceased which is more particularly set out in Liber for the year 1857 at pages 497 to 498 being lots No. 16, 17, 31 and 33 situate in Little London in the State of Saint Vincent and the Grenadines.
3. An order declaring the Deed No. 982 of 1996 is null and void and of no legal effect.
4. An order that the Defendant do forthwith deliver up possession of all that lot piece or parcel of land situate at Little London in the Parish of Saint George in the State of St. Vincent and the Grenadines containing by measurements 3 acres, 2 rood and 17 poles...
5. An injunction restraining the defendant whether by himself his servants or agents or howsoever otherwise from entering and/or crossing and/or

constructing and/or building any structure on the said land referred to in paragraph 1 above, the property of the late William Robertson.

6. An order restraining the defendant whether by himself his servants and /or agents or howsoever otherwise from selling and/or offering for sale any portion of the land described in paragraph 1 above the property of the late William Robertson.
7. An order declaring that all conveyance which have their derivative title Deed of Conveyance No. 982 of 1996 be declared null and void and of no legal effect.
8. An order that the defendant pay over forthwith to the claimant the sum of \$126,675.00, being the value of the properties disposed of by the defendant.
9. An order declaring that Edward Albert Robertson was never the legal owner of lots No. 16, 17, 31 and 32.
10. Such further and other orders as to this Honourable Court seems just.
11. An order for Costs.

[86] The claim and statement of claim against the 2nd respondent Hariette Richardson in claim no. 534 of 2004 sought the following relief:

1. A declaration that the claimant and his predecessors in title are the lawful owners of lots 16, 17, 31, 32 and 33 situate at Little London.
2. An order restraining the defendant from entering upon the property of the late William Robertson deceased as bequeathed to his grandchildren, their heirs and assigns forever.
3. An order declaring the Deed No. 1520 of 2003 is null and void and of no effect.

4. An order that the Defendant do forthwith deliver up possession of 5414 sq. ft. of land situate at Little London and described in the Schedule to Deed No. 1520 of 2003 or pay its value being \$27,070.00.
5. Damages for trespass.
6. Costs.

[87] I am therefore satisfied that the 2 claims were predominantly asking for substantial relief in equity among other reliefs. In these circumstances, I would conclude that the plea of bona fide purchaser for value without notice is not available to the two respondents to defeat the equitable interest of the appellant and to give them a valid title rooted from the will of Edward Robertson. Edward's will could not validly dispose of the interest in the land.

[88] Even if the plea was assumed to be available as a defence, the two respondents would not have successfully invoked it in my view for the following reasons.

[89] On 18th March 1996, the land was conveyed to Baldwin King, and there was no evidence that at that time Baldwin King had actual notice that the land was not Edward's. The evidence is that Mr. King first became aware in 2003 through his agent Mr. Donald Providence that Gershon Robertson was claiming ownership of the lands. This knowledge of Mr. King in 2003 cannot relate back to the date of the purchase negotiations.

[90] "For actual notice to be binding it must be given by a person interested in the property **and in the course of negotiations:**"¹⁸ Mr. King's evidence was that as far as he was aware Mr. Crick was in possession of the land he bought through a Real Estate Agency. Mr. King said he visited the land with his realtor before purchasing it and he made inquiries and found Julia Williams, Lester Davis and

¹⁸ Halsbury's Laws of England (4th edition) Vol. 16 at para. 1322.

Fitzroy Peters all renting from or under the direction of Mr. Crick. Mr. Crick testified that from the time he became executor in 1947 nobody ever claimed the land (at page 59 of record). Mr. Crick testified that Edward's wife Adriana was in charge of the land after Edward died up until her death in 1969, and thereafter, Berkley Samuel (Edwards's grandson) was in charge up until 1996 when land was conveyed to Mr. King.

[91] The appellant testified that the land was in occupation of the Robertson family members for 147 years, including his great grandfather Robert, his grandfather Berthold, his aunt Tilly Robertson, his father Adolphus Robertson and a relative Westfield John o/c Robertson alias Gerico. The dates and times of their occupation were not stated. The appellant only discovered Edward's will in 2003 when he was doing research. So it is clear from the evidence that Mr. King would not have had actual notice.

[92] Notwithstanding this, a purchaser must inquire for the title deeds and other documents affecting the claim of title and call for their production, and he may accept a satisfactory reason for their non production; (**Halsbury's** at para 1328):

"A purchaser of land without actual knowledge, by himself or his agent, of a matter prejudicially affecting his vendor's title may yet be regarded as having constructive notice of it...first, where he omitted to make usual and proper inquiries into the vendor's title; secondly, where he omitted to follow up an inquiry suggested by some other matter of which he had actual notice; and thirdly, where he designedly abstained from inquiry for the purpose of avoiding notice. In any of these cases the purchaser was held to be affected with notice of what he would have discovered if he had made the inquiries which a prudent purchaser would have made in the circumstances:" (16 **Halsburys** at para 1327).

[93] Mr. King and his agent should have had notice of the will of Edward Robertson and the Will of William Robertson which was mentioned in Edward's will, both of which affect the land and form part of the claim of title recited in his Deed of Conveyance from Mr. Crick. "An instrument the effect of which depends on some earlier instrument is prima facie an insufficient root of title, and it is necessary to go back to the earlier instrument; for example, a title depending on an appointment under a

power or on a disentailing deed must be carried back to the instrument creating the power or the entail.”¹⁹ Notice of these two wills is notice both of their contents and of the facts which would be disclosed if their production was insisted on by Mr. King and his agent. It therefore cannot be said that Mr. King in the circumstances of this case was a bona fide purchaser for value without notice in my view.

[94] As for the respondent Ms Harriette Richardson, she acquired the land on 30th April 2003. The letter to her from the appellant’s lawyer which was dated 1st September 2004, was written after she had bought the land; so it would not be regarded as a notice given by an interested person during the course of negotiations for purchasing the land. The question therefore is whether she had constructive notice that all of the land under the Deed of Conveyance to Baldwin King could not have legally passed to him. If she is found not to have had constructive notice, then the appellant’s equitable interest cannot be asserted successfully against her.

[95] Ms Richardson’s evidence at paragraphs 3 and 4 of her witness statement was that:

“Prior to the purchase of the said land I had my Solicitors carry out a search on the title of the said land to ensure that it was free from all encumbrances. On the title being declared free from all encumbrances. I paid good and lawful money obtained through a loan from the General Employees Cooperative Credit Union...”

[96] Ms Richardson’s Deed of Conveyance from Mr. King also referred to Mr. King’s Deed of Conveyance from Mr. Crick. Insistence on an abstract of title by the Solicitors of Ms Richardson, as discussed in **Halsbury’s** Volume 42 at paragraphs 147 to 154 would have disclosed that Edward Robertson did not inherit the land that was sold to Mr. King as the heir of William Robertson. Their failure to discover this fixes Ms. Richardson with constructive notice; and the plea would not protect her assuming that it was available to her.

¹⁹ Halsbury’s Vol. 42 “Sale of Land” at paragraph 148.

Acquiescence and Laches

[97] The respondent Mr. Baldwin King pleaded at paragraph 9 of his defence that the claimant failed and/or neglected to assert any claim whatsoever to the land at the material time and his claim is barred by laches and/or acquiescence.

[98] The success of the plea depends on the following elements being established by evidence:

1. The respondents must be mistaken as to their own legal rights; if they were aware that they were infringing the rights of the appellant and his predecessors, then they take the risks of those rights being asserted.
2. The respondents must have expended money and/or done acts on the faith of their mistaken beliefs, otherwise they do not suffer by the appellant's subsequent assertions of his rights.
3. The appellant must know of his own rights, so where he assents to the respondents' activities concerning the land, in ignorance of his beneficial interest in the land, he may be permitted to enforce his rights.
4. The appellant must know of the respondents' mistaken belief.
5. The appellant must have encouraged the respondents in their expenditure of money or other acts on the respondents' part, either directly, or by abstaining from asserting his (the appellant's) legal right.²⁰

[99] The court may give protection to a purchaser where a person interested in property has stood by while the purchaser got what he supposed was a good title to the property; and a person so standing by cannot afterwards set up his title against the innocent purchaser or a person deriving title under him. The protection may take the form of requiring repayment of the money, or the refusal to the true owner of an

²⁰ Halsbury's Vol. 16 at paragraphs 1473 to 1475.

order for possession; or of holding the person expending the money entitled to a charge or lien, or of a finding of constructive trust.²¹

[100] For laches, the element of acquiescence is included, and a court of equity will refuse to assist the claimant with a stale claim where the claimant has slept upon his right and acquiesced for a great length of time who is then said to be barred by laches. The defence of laches could not succeed in this case in any event, because the appellant is entitled to the 12 years statutory bar period under section 17 of the **Limitation of Action Act** Cap. 99 which would operate from the date Mr. King acquired and entered into possession of the land. Laches is only allowed where there is no statutory bar. (At para 1476 of **Halsbury's**).

[101] The appellant testified that he was about 5 years old when his great uncle Edward Robertson who lived at Riley died in 1947. However, Edward's will states that he was of Little London and not Riley. The appellant stated that he was abroad for a long time – 13 to 14 years and he came back to St Vincent and the Grenadines in 1995 or 1996 to live in his house at Fountain. The appellant's father lived in Riley and also worked the land; and upon the appellant's mother's death his father took the family to live in Fountain where he has lived for 30 to 40 years. The appellant's siblings consist of 6 brothers and sisters, and his 4 sisters live in Canada and 1 brother lives in St Vincent and the Grenadines. After his aunt Tilly who occupied the land died, her son Gerico took over the land and was in charge of it. The appellant never worked the lands after his return in 1995/1996 or lay claim to the land. The appellant admits that during the time Mr. Crick was in charge of the land that the appellant was not there. The appellant was not aware that Edward's wife Adriana was overseer for the land after Edward's death.

[102] It would seem from this evidence that protection could not be afforded to the respondents on grounds of acquiescence; because there is no proof that the appellant stood by and did nothing after he became aware of Mr. King and Ms Richardson's mistaken belief that they had a valid legal title to the land. The other

²¹ At paragraph 1475 op. cit.

elements have on a balance of probability been proven but the 4th element has not been proven. The evidence shows that the appellant carried out investigations and sought redress as soon as he became aware in 2003 that Baldwin King was exercising acts of ownership, had bought the land and was selling mutated parcels from it. The pleas of acquiescence and laches therefore must fail.

[103] Having examined the reliefs claimed by the appellant in both claims, I too am of the view that it would work injustice if an order is made for the 2nd respondent to deliver up possession of the land described in Deed No. 1520 of 2003. I am also of the view that it is just and fair for the respondent Baldwin King to be compensated for any improvements that he has carried out in respect of the said lots of land where such improvements are ascertained and valued. I am guided by section 20 of the **Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act** Cap. 18. This provision exhorts the court to grant absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.

[104] I note that the reliefs sought in the appeal include an order that the sale of the property to Baldwin King is invalid null and void and of no effect; that Baldwin King deliver up possession forthwith to the claimant; or alternatively that Baldwin King pay over the sums of monies realized on the sale of the said properties and upon his doing so the appellant will execute valid deeds of conveyance to the respective purchasers.

[105] Consequently, I would allow the appeal with costs to the appellant on each of the claims in terms of the following order:

Order

- (i) It is hereby declared that lots 16, 17, 31, 32 and 33 situate at Little London, in the State of St Vincent and the Grenadines are the property of the heirs/descendants and/or beneficiaries of William Robertson's named grandchildren Robert Alexander Robertson, Caroline Medicia, Charles Robert Sinclair, William Sinclair and Ann Robertson, under the will of William Robertson.
- (ii) The respondent Baldwin King shall pay over to the Registrar of the High Court for the benefit of the heirs/descendants and/or beneficiaries referred to at paragraph (i) of this order, the sum of \$27,070.00 less the stamp duty, transfer tax, and legal costs he paid in connection with the sale, representing the net proceeds together with interest thereon at 4% per annum from 30th April 2003.
- (iii) Upon the Registrar receiving payment of the net proceeds together with the interest thereon the respondent Hariette Richardson may apply to the High Court for an order declaring her to be the lawful owner of the said land.
- (iv) The respondent Baldwin King is entitled to be refunded the purchase price of \$57,000.00 which he paid for the said lots 16, 17, 31, 32 and 33 together with interest thereon at 4% per annum by the heirs/descendants and/or beneficiaries referred to at paragraph (i) of this order.
- (v) The consolidated claims are remitted to the High Court for the Court to give directions so as to ascertain and determine who are the persons who answer the description as heirs/descendants and/or beneficiaries referred to at paragraph (i).
- (vi) The High Court shall give directions for the respondent Baldwin King to supply proper accounts to the court relating to his dealings with, expenditure on developments of and improvements to the said lots 16,

17, 31, 32 and 33 since 18th March 1996; and the net proceeds of sale for any other mutated parcels sold from the said land shall be paid over to the Registrar of the High Court for the benefit of the said heirs/descendants and/or beneficiaries.

- (vii) The remaining land and the improvements done to the land are to be valued by an assessor appointed by the Court, and the respondent Baldwin King is entitled to compensation approved by the court for any proven improvements to the land from the said heirs/descendants and/or beneficiaries.
- (viii) It is hereby declared that the Deed of Conveyance registered as No. 982 of 1996 dated 18th March 1996, is null, void and of no effect.
- (ix) The High Court to determine and give directions concerning the respondent Baldwin King delivering up possession of the remaining portion of lots 16, 17, 31, 32 and 33 at Little London.
- (x) The costs in the court below are to be prescribed costs to be agreed on or ordered to be paid pursuant to CPR 65.5(2)(a) in respect of each claim.
- (xi) The costs in the appeal to be agreed on by each respondent and the appellant, otherwise to be two thirds of the prescribed costs in the court below on each claim.

Ola Mae Edwards
Justice of Appeal

[106] CUMBERBATCH, J.A. [AG.]: I have read in draft the two judgments which precede mine and, for the reasons stated by Edwards, J.A., premised on the facts as set out by Redhead, J.A., I concur in the decision and orders made.

[107] I too agree that the statute applicable to the disposition of the property by Mr. Joseph Crick is the **Administration of Estates Act**²², section 5(2) and section 30 of which would permit him to transfer the property without the leave of the court, provided that the property was in law subject to his executorship under the will. In the event, it was not.

[108] Further, I am of the view that both purchasers are fixed with at least constructive notice of the invalidity of the sale, even if they were otherwise entitled to invoke the plea that they were bona fide purchasers for value without notice. Nor do I think that a defence of laches and/or acquiescence is maintainable against the claimant on the facts.

[109] For these reasons, I would allow the appeal from the judgment of the trial judge below with costs to be agreed or, failing agreement, to be fixed in the manner suggested by Edwards, J.A.

Jefferson Cumberbatch
Justice of Appeal [Ag.]

²² Cap 377 of Laws of St. Vincent and the Grenadines.