

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

PETITION NO: SLUHCV 2007/0431

BETWEEN:

VICTOR DELICES

Claimant

and

[1] LINDLEY LUBIN of Over the Bridge Micoud  
[2] FRANCIS LUBIN of Over the Bridge Micoud  
For Heirs Franchette Remy or Franchette St. Remy

Defendants

[3] (i) CORNELIUS LUBIN of Morne Fortune, Castries  
(ii) WINIFRED LUBIN of Sans Souci, Castries  
(iii) PEARL LAMBERT of Patvale Development, Castries

Third Defendants

**Appearances:**

Ms. Esther Greene-Ernest with Ms. Petra Jeffrey Nelson for Claimant  
Mr. Evans Calderon for 1<sup>st</sup> and 2<sup>nd</sup> Defendants  
Mr. Kenneth Monplaisir QC for 3<sup>rd</sup> Defendants

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2009: November 20;  
2011: June 27.

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**JUDGMENT**

[1] **GEORGES J. [AG.]:** By application by way of petition filed 31<sup>st</sup> May 2007 the claimant seeks a declaration of title under section 2103A of the **Civil Code** Chapter 242 Saint Lucia and the provisions of the West Indies Associated States Supreme Court Prescription by thirty years (Declaration of Title) Saint Lucia Rules No. 7 of 1970 to a parcel of land registered in the Land Registry as Parcel 1825B 8 in the Registration Quarter of Micoud comprising 20.00 hectares or approximately 48 acres.

- [2] The basis of his claim is that he is the son of Joseph Delices and Elizabeth Delices who died on 23<sup>rd</sup> July 1990 and 16<sup>th</sup> April 1992 respectively and that before their deaths they were owners in possession for a period of more than 30 years. He also states that he was born on the land on 3<sup>rd</sup> August 1962 and was raised there. The parcel of land itself is registered and was in fact first registered on 11<sup>th</sup> March 1987 in the name of Heirs of Fanchette Remy with title absolute.
- [3] Two principal issues which fall to be determined are:
- (i) Whether the claimant/applicant effectively occupied the land claimed viz, Parcel No. 1825B 8 (Parcel 8) to satisfy the requirements for a prescriptive title of 30 years in accordance with Article 2057 of the Civil Code that is to say was his possession of Parcel 8 “continuous and uninterrupted, peaceable, public, unequivocal and as proprietor”.
  - (ii) The consequences of the title on the Land Register in the name of Heirs of Fanchette Remy and the effect of the **Land Registration Act 1984**.
- [4] The acts of possession on which the claimant relies as set out in his petition are:
- (i) That Joseph Delices and Elizabeth Delices his parents occupied the property as proprietors in possession for more than 30 years before they died on 23<sup>rd</sup> July 1990 and 16<sup>th</sup> April 1992 respectively.
  - (ii) He himself was raised on the property and continued the possession of his deceased parents who were in sole continuous undisturbed peaceable and exclusive possession as owners/proprietors of the property for over 30 years from the year 1962 when he was born.
  - (iii) His parents built their home on the property and cultivated coconuts, breadfruits, bananas, mangoes, pears, and sugar apples among other crops on the land and reared cows, sheep and goats.

- (iv) He denies that a fence had been erected (as alleged by the third defendants) restricting his access to a certain portion of the land.

### **Third Defendant's Response**

- [5] The third defendants on the other hand maintain that the claimant was in actual fact no more than a **licensee who lived on part of the land** in a wooden house with his father Joseph Delices, a tenant at sufferance to whom permission had been granted to erect it. The claimant/applicant himself later took up residence after the death of his parents. The defendants deny that the claimant ever cultivated the land. (My emphasis)

### **Factual submissions of the parties**

- [6] The claimant's case in a nutshell is that the land in question was occupied by his parents Joseph Delices and Elizabeth Delices for over 30 years. They died on 23<sup>rd</sup> July 1990 and 16<sup>th</sup> April 1992 respectively. He declared that he was born on the land on 3<sup>rd</sup> August 1962 and lived there continuously. He claims the benefit of his parents' prescriptive rights to fulfill the prescriptive period of 30 years. His parents built their home on the property and cultivated crops on the land such as coconuts, breadfruit, bananas, mangoes and the like and also reared animals such as cows, sheep and goats.
- [7] The defendants version is that Joseph Delices the father of the claimant/applicant Victor Delices lived at Dugard Micoud. As one of the children of Leticia who was permitted to live on the land by Franchette Remy, Joseph was brought up on the land and later migrated to England and on his return was permitted to build a wooden house on the land which the claimant occupied after Joseph's death and continued to live on the land. The defendants contend that the land was not cultivated except for about 150 banana ratoons, 18 coconut trees and 10 ordinary (not grafted) mango trees.

### **Legal submissions of the parties including the issue of locus standi**

- [8] Claimant counsel argued that the defendants had no locus standi (legal standing) in the matter as they are not entitled to represent the Estate of Franchette Remy. This question was in actual fact raised as a preliminary issue at the outset of the hearing by Ms. Petra Nelson learned counsel for the claimant who submitted that the defendants had no sufficient interest in this matter and in the property which is the subject matter of this suit.
- [9] The defendants learned counsel pointed out claim to be heirs-at-law of Franchette Remy on the basis of having descended from her and a daughter Maximina Lubin. No document had however been produced linking them as personal representatives counsel revealed.
- [10] A Declaration of Possession executed by Maximina Lubin on 10<sup>th</sup> March 1962 and exhibited by the defendants recites in Clause 1:
1. That she is the illegitimate child of the late Franchette Remy who died at Micoud aforesaid on 18<sup>th</sup> May 1929, intestate and unmarried and without heirs of any inheritable degree.
- [11] Ms. Nelson submitted that this comes from the same person whom the defendants purport to come through or to rely. The declaration is a registered document counsel argued and it is such that if Maximina Lubin was indeed or in fact the child of Franchette Remy she was an illegitimate child and in her own words was not an heir of Franchette Remy within the inheritable degree as provided by law.
- [12] Learned counsel further submitted that the defendants had not exhibited any documents to prove that Maximina Lubin was the daughter of Franchette Lubin or that they are in any way connected with Maximina Lubin. No birth certificate had been displayed to show any connection in the ascending or descending line. Nor was any grant of probate or letters of administration exhibited. There was nothing to connect the lineage, the claim of inheritance or otherwise counsel submitted.

And notwithstanding the Declaration of Possession the land which is the subject matter of this suit remained registered in the name of Heirs of Franchette Remy. No other person had legal title to the property counsel declared.

[13] The defendants, learned counsel continued, were asserting the title of another namely Franchette Remy which they are precluded from doing since they have not shown sufficient interest in the subject matter to establish the necessary locus standi for them to be heard to even challenge the claim before the court. The defendants' defence counsel submitted was in effect a statement of claim which could not be successfully mounted if "the claimants" had no sufficient interest in the subject matter of "the claim" and lacked locus standi.

[14] This was illustrated counsel declared by Barrow J. as he then was in **High Court Civil Suit No. 326 of 1999 (St. Lucia) in Edward Phillip Mathurin & Anor and Magdalene Wilson et al** (unreported) at page 5 paragraph 19 where the learned Judge declared that:

"...a litigant must have some recognizable legal or other interest in the issue not being merely intellectual prospective or indirect. The rationale for the requirement of locus standi is well established. There must be a limit to the category of persons who can be allowed to litigate an issue otherwise any idle or completely unconnected person would be able to mount a challenge to something with which he has not the slightest possible connection."

[15] In sum learned counsel submitted on behalf of the claimant that the defendants not being themselves heirs to the property and without having any legal or other interest in the property could not show that they have the slightest legally recognizable connection to the property which is the subject matter of this suit. The defendants cannot take any action or legally challenge the possessor of the property who is the claimant counsel contended adding that the defendants did not in any case have a better legal right to possession of the property.

### **Irregular Succession**

[16] Elaborating further, Ms. Nelson explained that it was not until 1957 that irregular succession was introduced in St. Lucia and for the first time an illegitimate child

could succeed from a mother who was a single woman with the prerequisite that there should be no heirs ascending descending or collateral existing at the time. No way could Maximina Lubin have inherited from her mother in 1929. It would have had to have been in the ascending descending or collateral line counsel pointed out.

[17] From the date of first registration on 11<sup>th</sup> March 1987 to this day no personal representative had been appointed to represent the estate of Franchette Remy claimant counsel declared and the only way the defendants could properly have approached the court in this regard would have been to appoint someone pursuant to Part 21.1(2) of the **Civil Procedures Rules (CPR)** to represent the Estate of Frachette Remy whereby the court may appoint someone who has a significant interest.

[18] Attention was drawn to Article 608 of the **Civil Code** which provides that when an interest remains vacant or in abeyance for 12 months the property is then vested in the Administrator General who may be the only person with a right to challenge the petition of a claimant but is not in fact a party in the instant suit.

[19] In conclusion learned counsel stressed that it was pellucidly clear that the defendants had no locus standi – no interest – legal beneficial or otherwise and were therefore precluded from mounting a challenge to the claimant's petition for prescriptive title.

### **The Defendants' Response**

[20] In reply learned Queens Counsel, Mr. Kenneth Monplaisir representing the third defendants submitted that on the question of locus standi account had to be taken of the **Land Registration Act** where at the end of the day the Adjudication Officer signs the Record which is a judicial order and the only way it can be removed is by fraud or mistake in accordance with section 98 of the **Land Registration Act** 1984.

[21] The Adjudication Record he submitted was important in deciding whether there was locus standi or not. Referring to the Demarcation Certificate and paragraphs 5 and 6 of the Affidavit of David Ferrick Lubin learned counsel stated that certain conclusions and inferences could be drawn.

[22] In paragraphs 5 of his affidavit sworn 27<sup>th</sup> November 1985 David Ferrick Lubin attests:

“5. That the land was bought by my grandmother Franchette Remy and was inherited by Maximina Lubin (Remy) my mother who died in the year of 1974 and left six lawful heirs namely:- (a) Gabriel Lubin (b) Martin Lubin (c) Patrick Lubin (d) David F. Lubin (e) Madlen Lubin and Rosita Walters (Lubin)”

Counsel submitted that the said paragraph 5 had obviously been accepted by the Adjudicating Officer in that he gave the property to Heirs Franchette Remy. The second matter of importance learned Queen’s Counsel pointed out is that there are heirs and that they are named. And further at paragraph 8 the deponent states:

“8. Lately that there has been some dispute with someone whom my mother gave a house spot on the land.”

[23] The court was invited by Mr. Monplaisir to juxtapose that statement with the Declaration of Possession executed on 10<sup>th</sup> March 1962. The adjudication process took place after that in November 1985 the legal consequence of which was a negation of that document. Referring to the Demarcation Certificate the witnesses are Joseph Delices, Hubert Prospere and Sylvester Prescott and the claimant is Ferrick Lubin representing Heirs Franchette Remy counsel pointed out. This showed that the heirs of Franchette Remy were represented by the **Lubin** Family with the result being that the claimant Victor Delices and counsel for him are estopped from saying that there are no representatives of the Heirs.

[24] Reference was then made to the court’s general powers of management under Part 26.1(2)(e) CPR which authorizes the court in such circumstances to direct a separate trial of any issue. Counsel stressed that the same heirs were coming before the court to litigate this matter. All the claimant’s arguments had been

diffused by judicial process based on the adjudication record Mr. Monplaisir submitted and the claim for declaration of title by prescription should consequently be dismissed counsel urged.

[25] In a succinct yet lucid and comprehensive exposition Mr. Evans Calderon counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants first outlined the object and effect of the **Land Adjudication Act** 1984 (the LAA) and the **Land Registration Act** 1984 (the LRA) on the case in point.

[26] The LAA Mr. Calderon explained set out the procedure to be adopted in the Adjudication of Land to (a) those people with documentary title to land (b) those people who have no documentary title but claim to have been in possession of land exclusively for thirty (30) years and (c) all other land belong to the Crown.

After the adjudication process all lands were duly registered and are regulated thereafter by the LRA.

[27] Parcel 1825B 8 is registered in the Proprietorship Section of the Land Register as belonging to Heirs Franchette Remy after it was claimed by David Ferrick Lubin the grandson of, and representing Heirs Franchette Remy.

[28] The said Land Register shows Edition 1 opened on 11/3/87 with Origin of Title First Registration as 11/3/87. Therefore, it is expressed that Title to Heirs Franchette St. Remy aka Remy begins with First Registration 11/3/87.

[29] On 31<sup>st</sup> May 2007 by Petition 0431 Petitioner Victor Delices claimed prescriptive title against the title of Heirs Franchette Remy by Prescription by thirty (30) years (Declaration of Title) Saint Lucia Rules No. 7 of 1970.

[30] The question which therefore arises is whether Victor Delices should be given prescriptive title to the 48 acres or any part of the land which he occupies. In learned counsel's view the answer ought to be no.

[31] Learned counsel reinforced his conclusion by reference to the **West Indies Associated States Supreme Court Prescription by thirty years** (Declaration of Title) Saint Lucia Rules No. 7 of 1970 section 7 which enjoins that:

"If the immovable property includes land the Petition shall be accompanied by a plan made by a Licenced Surveyor, and the Court may reject any plan which it considers insufficient."

[32] The survey plan which accompanied the claimant/applicant's petition learned counsel submitted was insufficient since it did not show the land claimed and occupied by the Petitioner. The description of the land on the plan and the description in the Petition were further incorrect counsel pointed out. That is clearly fundamental and would be fatal to the petition in my considered view. The plan learned counsel pointed out which was surveyed since 1915 was not lodged in 1952 as stated. The plan is accordingly rejected by the court.

[33] The rationale for this provision in W.I.A.S Supreme Court **Prescription by thirty years (Declaration of Title) Saint Lucia Rules** No. 7 of 1970 counsel elucidated was that (1) The land should be surveyed by the Petitioner publicly with notice to all adjoining neighbours and occupiers (2) demarcate precisely the area claimed and occupied by the Petitioner.

[34] Referring to section 3 LRA as amended Mr. Calderon finally submitted that one can only claim prescriptive title against land of Heirs Franchette Remy after the date of Origin of Title and 1<sup>st</sup> Registration which is 11<sup>th</sup> March 1987 because title to land was interrupted during the Land Registration Titling Project.

[35] Attention was also drawn to section 7(2) LAA which states that:

"Except with the consent in writing of the adjudication officer, no action claiming an interest in land or rights to land in an adjudication shall be initiated in any Civil Court until proceedings under this Act have been completed"

Here learned counsel submitted that the LRA was not intended to be of retrospective effect and should therefore operate prospectively. Hence the

Petitioner could not add any period before 1984 to his period after his father's death in 1990 to make up 30 years ownership.

- [36] Most importantly the evidence adduced showed that the Petitioner's father and those before him on the land were there on sufferance and consent of the owners. As tenants on sufferance the tenants were holding the portion or any part of the land occupied **in trust for the owner**.

And section 94(2) LRA states that:

"(2) A person possessing land in a fiduciary capacity on behalf of another shall not acquire by prescription ownership of the land against such other."

- [37] Section 16 LAA which relates to principles of adjudication states that:

"For the purpose of this section a person is deemed to be in possession thereof within the meaning of Articles 2056 and 2064 of the Civil Code."

Article 2056 states:

"Possession is the detention or enjoyment of a thing or of a right, which a person holds or exercises himself or which is held or exercised in his name by another."

Article 2064 states:

"A successor by particular title may join to his possession that of him from who his title derived in order to complete prescription. Heirs and other successors by universal title continue the possession of him of whom they are the heirs or successors, except in the case of Introversion of Title."

Article 2060 states:

"Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription."

- [38] On the question of the preliminary point raised by claimant counsel relating to the absence of locus standi and the lack of sufficient interest by the defendants in the matter in dispute Mr. Calderon submitted that the Demarcation Officer had considered the Declaration of Possession by Maximina Lubin when David Ferrick Lubin claimed the land during the adjudication process. David Ferrick Lubin died in 1992 and therefore counsel submitted his lawful sons had every legal right to

represent their father as heir of Franchette Remy in defending this suit against the Petitioner of the land. This is better developed and elucidated by Mr. Monplaisir in his response on behalf of the 3<sup>rd</sup> defendants at paragraphs 21–23 of this judgment on the same issue and by which I am persuaded and accept.

[39] Notwithstanding the valiant arguments of claimant counsel on the preliminary issues of absence of locus standi and insufficient interest on the part of the defendants in the subject matter of this suit the adjudication process and the resultant adjudication record were of crucial importance in determining whether there was locus standi or not. This was cogently reasoned by Mr. Monplaisir in his response on behalf of the 3<sup>rd</sup> defendants and well supported by Mr. Calderon in his own submissions.

[40] It is therefore my considered view that having regard to all the circumstances the provisions and the application of the **Land Adjudication Act** and the **Land Registration Act** preclude possession for thirty years by the claimant and his petition for a declaration of title by prescription by thirty years to Parcel 1825B 8 in the Registration Quarter of Micoud comprising 20 hectares or 48 acres is accordingly dismissed with costs to the defendants to be agreed or otherwise assessed on representation made in writing within seven days.

**Ephraim Georges**  
High Court Judge [Ag.]