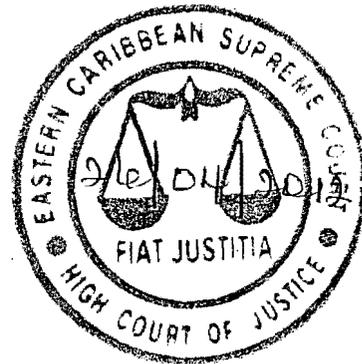


**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 88 OF 2008**



BETWEEN:

KEON ROBERTS

Claimant

v

LILLITH JOHNSON

Defendant

Appearances:

Mr. Stephen Williams for the Claimant

Mr. Joseph Delves for the Defendant

2011: November 22
2012: April 26

JUDGMENT

- (1) **THOM, J:** Hilda Johnson now deceased was the owner of a parcel of land situate at Barrouallie and measuring approximately 3,859 square feet.

- (2) Sometime in the 1930's Hilda Johnson's son Cyril constructed a house on the front portion of the land, while Hilda Johnson's house was pushed to the back portion of the land. Cyril Johnson and his wife Isabella resided in the house until 1972 when Cyril died. Isabella subsequently died in 1975. Sometime after Isabella's death the Claimant occupied Cyril and Isabella Johnson's building and operated a liquor shop there. It is disputed that he resided there until 1991 when he moved to a house

that he built at Walliabou. On June 24, 2007 the Defendant removed the items that were in the said building and demolished the building.

- (3) The Claimant on March 26, 2008 instituted these proceedings in which he claims:
- (a) A declaration that the parcel of land in dispute is the property of the Claimant and that the Claimant is entitled to peaceful possession of the said parcel of land.
 - (b) That the Defendant cease her trespass and discontinue her unlawful occupation of the Claimant's land.
 - (c) That the Defendant dismantle any structure or building placed on (sic) constructed by her on the Claimant's land and remove therefrom all materials, equipment or debris brought onto or accommodated by her on the Claimant's land.
 - (d) Special damages in the sum of \$163,036.00.
 - (e) Costs.
 - (f) Such further and other reliefs.

- (4) The Defendant in her defence alleges that she is the owner of the property by virtue of Deed No. 1176 of 1989 dated 14th April, 1989. The Claimant trespassed on the land and several notices to quit and discontinue his acts of trespass were sent to the Claimant. When the property was left vacant the property was demolished.

EVIDENCE

- (5) The Claimant did not testify at the trial. His main witness was his wife Eden Roberts. Her evidence is that Hilda Johnson divided her property and gave her son Cyril Johnson the front portion of the land ("the disputed property") while she retained the back portion of the land. Cyril Johnson constructed a two-storey building on the disputed property and

he and his wife Isabella resided there. Cyril Johnson predeceased Isabella Johnson and Cornelius Roberts the Claimant's father took care of her and she gave the property to Cornelius Roberts. When Isabella died in 1975, Cornelius Roberts gave the disputed property to the Claimant. The Claimant has been in possession of the disputed property since 1975.

- (6) From 1988 they commenced operation of a liquor shop, they paid the house tax in the name of Cyril and Isabella Johnson and the land tax in the name of Thomas Johnson the husband of Hilda Johnson who originally owned the property.
- (7) In 1989 they started a business on the premises and in 1991 they moved to Walliabou where they had constructed a house, however they continued to operate the business on the disputed property. His son continued to occupy the upper floor.
- (8) In 1998 the Claimant moved to the United States of America and another son Orlando Richards occupied the upper floor as his residence and the lower floor as a shop. One Bridgette Sam assisted him in operating the shop.
- (9) The Defendant issued a claim against the Claimant for possession of the disputed property on March 29, 2004. On June 24, 2007 the Defendant demolished the building on the disputed property and thereby damaged several items the property of the Claimant. Some of the contents of the building were transported to Walliabou and placed on the road in front of her home. The Defendant withdrew her claim on February 18, 2008.

- (10) Eden Robert's testimony was supported by St. Clair Roberts, the brother of the Claimant and Orlando Richards and the Claimant's son. Orlando Richards testified that he lived with his father and family at the disputed property from the 1980's to the 1990's when they moved to Walliabout. His younger brother Zico Roberts was residing on the upper floor and operating a liquor store on the lower floor when the Defendant demolished the building.
- (11) Under cross-examination Eden Roberts testified that she learnt in the 1990's that the Defendant had a deed for the disputed property but she had not seen the Deed. She admitted that Cyril Johnson did not have a Deed for the disputed property, not did her father-in-law Cornelius Roberts and her husband the Claimant. She maintained that the property was divided by Hilda Johnson but there was no separate Deed. In her words the Claimant became the owner "through the family tree". She agreed that she was born in 1963.
- (12) The evidence of the Defendant is that she is the lawful owner of the disputed property. Hilda Johnson died in 1972 and by her will, her daughter-in-law Luenda Johnson was the sole beneficiary of her estate. Luenda Johnson conveyed the property to the Defendant by way of Deed of Gift No. 1176 of 1989.
- (13) The Defendant further testified that Hilda Johnson never divided the land, but rather she gave Cyril Johnson her son permission to construct a house on the land where he resided. Cyril Johnson died in 1973 and his wife Isabella Johnson took ill and she died in the Mental Hospital in 1975. Sometime after Isabella Johnson died the Claimant broke off the locks of the house and trespassed on the disputed property. In 1989 he occupied the disputed property as a shop. He never resided at the disputed property. He was never in undisturbed possession of the

disputed property. Several letters were sent to him requesting him to discontinue trespassing on the disputed property. A claim was filed against the Claimant for possession, but after the disputed property was vacated the claim was withdrawn. At the time when she demolished the property no valuable items were on the said property as Keon Roberts the son of the Claimant had removed whatever items were valuable. The property was old and was in a dangerous state.

- (14) Under cross-examination she denied that Cornelius Roberts took care of Isabella Johnson. She agreed that she lived at the back house with her grandmother Hilda Johnson. She also agreed that there was a wall on the property but testified that it did not divide the property, rather the wall was put to support the property as water from the gutter was affecting the property. It was in the 1970's after the volcano erupted that Keon broke into the house. He never lived in the house but operated a liquor shop there. She agreed that the shop was in operation in 2006. She agreed that she had to get the light and water disconnected before she demolished the building.
- (15) The Defendant's testimony was supported by her three witnesses Steve John, Dunston Johnson and Kenneth Johnson. There were some discrepancies as to when the Claimant commence occupation of the disputed property and the operation of the shop.

ISSUE

- (16) The issue is whether the Claimant is the lawful owner of the disputed property and is entitled to possession of the disputed property.

SUBMISSIONS

- (17) Learned Counsel for the Claimant urged the Court to accept the testimony of the Claimant's witnesses. Learned Counsel submitted that while Eden Roberts was not in a relationship with the Claimant prior to 1988, she was familiar with the Claimant, she used to be in his company. Eden Roberts knows the history of the family from living in Barrouallie. She lived next door to and often visited the house of Luenda Johnson formerly Hilda Johnson's house ever since she was a child. Eden Roberts was born in 1963.
- (18) Learned Counsel submitted that the fact that Vinlec had to disconnect the electricity and water prior to the demolition of the building shows that there was an ongoing business on the disputed property when the building was demolished. The evidence shows that the Claimant or his agents have been in possession of the premises after the death of Isabella Johnson in 1975 until the property was demolished in February 2008.
- (19) Learned Counsel for the Defendant submitted that the Defendant is entitled to possession of the property since she has a title Deed for the property. Her ownership could be traced back to the ownership of Thomas Johnson the husband of Hilda Johnson. The Deed is for the entire property. The Claimant has no title Deed and he has not pleaded adverse possession. He has not pleaded that the Claimant title and or right to possession has expired by virtue of the provisions of the Limitation Act.
- (20) Learned Counsel further submitted that based on the law of possession, the title holder of the property is deemed to be in possession. At all material times the Claimant and his agents were trespassers. The Defendant was entitled to enter on or re-enter the said property. No action lies against a landowner who has a right to recover his land even if

he enters forcibly - See Jones v Campbell (EWCA), June 25, 1988. In the present case the entry was not forcible, it was peaceful as there was no one in occupation, the property was vacant.

- (21) Learned Counsel also submitted that since the Claimant has no title Deed he is not entitled to a declaration that he is the lawful owner of the property nor is he entitled to peaceful possession of the property. The defendant in demolishing the property was exercising her right as owner.

FINDINGS

- (22) The Claimant's pleaded case is not based on adverse possession. The Claimant therefore did not lead any evidence that he was in adverse possession of the property in excess of twelve (12) years in accordance with section 17 of the Limitation Act. Learned Counsel for the Claimant rightfully in my opinion in his written closing submissions did not submit that the Claimant was entitled to possession of the property by virtue of adverse possession. Rather Learned Counsel for the Claimant submitted that the disputed property was given to the Claimant's Uncle Cyril Johnson who predeceased his wife and whose wife gave it to the Claimant's father who gave it to the Claimant. It is not disputed that none of the persons through whom the Claimant claims title being Cyril Johnson, Isabella Johnson nor Cornelius Roberts, ever had a deed for the disputed property. It is also not disputed that the Claimant never had a deed for the disputed property. All of the transactions were oral.

- (23) The Claimant did not testify. The main witness for the Claimant his wife Eden Roberts was born in 1963. Cyril Johnson constructed the house on the disputed property in the 1930's almost three decades before Eden Roberts was born. Also Isabella Johnson died at the Mental Hospital in 1975, at that time Eden Roberts would have been twelve (12) years old. Further Eden Roberts did not have a relationship with the Claimant prior

to 1988. In my opinion Eden Roberts had no knowledge of what transpired other than what was relayed to her. Eden Roberts did testify that she was a frequent visitor to the home of Hilda Johnson since she was a child. However in view of the fact that the discussions between Hilda Johnson and Cyril Johnson would have been in the 1930's, Eden Roberts had no knowledge of the details of those discussions. Also none of the other witnesses for the Claimant were privy to the discussions between Hilda and Cyril Johnson. I believe the evidence of the Defendant. She was not contradicted. I believe that the land was not divided. There is no document showing that the land was divided. Cyril Johnson built his house on the front portion of the land having put his mother's house to the back. This is quite usual in Vincentian and indeed in Caribbean family relationship, where parents permit their children to build very often bigger houses on the front portion of their land.

(24) The Defendant produced documentary evidence which was not contradicted that Hilda Johnson who died on the 12th day of February, 1972 bequeathed her entire estate to her daughter-in-law Luenda Johnson the Defendant's mother. The Defendant obtained Letters of Administration with the will annexed on February 10, 1989 and by Deed of Assent No. 851 of 1989 she conveyed the land to Luenda Johnson as the sole beneficiary of the Estate of Hilda Johnson. By Deed of Gift No. 1176/1989 Luenda Johnson conveyed the property to the Defendant.

(25) I also believe the testimony of the Defendant that at the time the building was demolished it was an old dilapidated building. It was constructed since the 1930's, no evidence was given of repairs or renovation done to the building either prior to or after the death of Cyril and Isabella Johnson. This evidence was not contradicted. The evidence on behalf of the Claimant that he operated a shop on the disputed property was also

not contradicted. The Defendant had tried several times over a number of years to evict the Claimant from the disputed property.

(26) I also believe the testimony on behalf of the Claimant that at the time the building was demolished it was being used as a residence. The list of items removed by Keon Roberts as exhibited by the Defendant shows that there were a number of household items in the building including living room chairs, dining table with chairs, dressing table, wardrobe and space saver. If no one was living in the building since Isabella Johnson died in 1975 as alleged by the Defendant the furniture of which the Defendant made a list would have long deteriorated. I also bear in mind the testimony of the Defendant that Keon Roberts had removed the valuable things from the building.

(27) The Defendant as the owner of the land was entitled to peacefully re-enter and take possession of her property. She was entitled to dismantle the old dilapidated building which was on her property. When the Claimant entered into possession of the property, he was not the lawful owner of the property and he was not entitled to possession of it. Cornelius Roberts his father through whom he claims his right to ownership of the disputed property was not the lawful owner and therefore could not convey any title or interest in the land to the Claimant.

(28) In removing the items of the Claimant from the property the Defendant was required to take reasonable care. The evidence shows that at the time that the Defendant re-entered the property neither the Claimant nor his wife Eden Roberts was in the jurisdiction of Saint Vincent and the Grenadines. The evidence shows that the items removed from the building were taken to the Claimant's home. The lists showing the items which were removed by Keon Roberts and the items taken to the

Claimants home were not denied by the Claimant's witnesses during the trial.

- (29) In conclusion I find that the Defendant is the owner of the entire parcel of land described in Deed No. 1176 of 1989. She is entitled to possession of the said land. The Claimant is not entitled to possession of any portion of the land. As the owner of the land the Defendant was entitled to re-enter and take possession of the land. The Defendant took reasonable care in removing the items belonging to the Claimant.
- (30) It is ordered:
- a. The Claimant's claim is hereby dismissed.
 - b. The Claimant shall pay the Defendant costs in the sum of \$7,500.



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Gertel Thom

HIGH COURT JUDGE