

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

CLAIM NO. NEVHCV2004/0031 & NEVHCV2005/0159

BETWEEN:

In the Matter of the Title by Registration Act Cap. 279

and

**In the Matter of a 1st Certificate of Title issued on 6th December 2004
to BERNADINE FORBES in respect of 1.002 Acre of land situate at
Zetland's Estate, St John's Parish, Nevis, recorded in Register Book 42
Folio 449 of the Register of Titles for the Nevis Circuit**

and

**In the Matter of a 1st Certificate of Title issued on 6th June 2006
to ALFORD WATTLEY in respect of 1.001 Acre of land situate at
Zetland Estate, St John's Parish, Nevis, recorded in Register Book 44
Folio 161 of the Register of Titles for the Nevis Circuit**

Appearances:

Mrs Myrna Walwyn with MsASURE-DEE LIBURD *for* Bernadine Forbes
Mr Jeffrey Nisbett *for* Alford Wattlely

**2009 : February 02;
2012 : July 02.**

JUDGMENT¹

- [1] **LEIGERTWOOD-OCTAVE J:** On 25th February 2004, Bernadine Forbes applied for a First Certificate of Title under section 12(1) (b) of the Title by Registration Act² [the Act] in respect of a parcel of land at Zetlands in the parish of St. John in the island of Nevis. Helen Bradley, Martin Cromwell and Emile Wattlely along with Bernadine Forbes filed affidavits in support of the application. On 6th August 2004, Bernadine Forbes filed a supplemental affidavit in support of her application for First Certificate of Title. She then deposed at paragraph 7 that this affidavit was made in support of her application for a First Certificate of Title under section 12(1) (d) of the Act.

¹ Clerical errors in this judgment, as first handed down, have been corrected in accordance with Part 42.10 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

² Cap. 279 of the Laws of the Federation of St. Christopher and Nevis

- [2] On 2nd December 2005, Alford Wattley [Alford Wattley] applied for a First Certificate of Title in respect of 1.001+ acre of land situated at Zetland Estate in the parish of St. John in the island of Nevis. His application was accompanied by affidavits in support from himself, James Levi Hill and James Daniel and Joycelyn Matthew but did not state the statutory provision under which it was made.
- [3] It is common ground between the parties that the land [the Zetlands land] referred to in both applications is one and the same and that the applicants are first cousins.
- [4] It is also common ground that although it was not expressed, Alford Wattley's application also falls under section 12 of the Act, which provides that:

“(1) Land not registered under this Act may be so registered-

- (a) if the applicant can show a good documentary title thereto in himself and his predecessors in ownership for at least thirty years next before the date of the presentation of the request under this Act;*
- (b) if notwithstanding that such a documentary title thereto cannot be shown, the Court is satisfied from the deeds or other documents accompanying the request that the applicant has the right to claim the land as owner and that he himself has been in undisturbed possession of the same continuously during the period of twelve years next before the date of the presentation of the request under this Act;*
- (c) if the applicant has, by descent or by will or deed, acquired a title to the land from a person who would have been entitled himself to have the land registered in accordance with the provisions of paragraph (b) of this subsection;*
- (d) if the land has been in the sole and undisturbed possession of the applicant alone or in his own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any other person through whom he claims, continuously for a period of thirty years next before the date of the presentation of the request under this Act.”*

- [5] Bernadine Forbes' application was granted on 6th December 2004 and a First Certificate of Title was issued in her favour by the Registrar of Titles, which is recorded in Register Book 42 Folio 449 of the Register of Titles.

- [6] Alford Wattley's application was also granted and a First Certificated of Title was issued to him and it is recorded in Book 44 Folio 161 of the Register of Titles.
- [7] When the matter was brought to the attention of the Registrar of Titles, it was referred to the Court by way of Case Stated in accordance with Sections 137 and 138 of the Act. The Court ordered that the matter proceed to trial as if the Certificates of Title had not been issued to Bernadine Forbes and Alford Wattley. Supplemental affidavits were to be filed and all affidavits were to be treated as examination in chief.
- [8] The court must now consider and make a determination on the competing claims. Affidavit evidence formed the core of the evidence but one deponent, Beatha Lipscomb, who resides in the United States, was cross examined by way of video conferencing.
- [9] Both Bernadine Forbes and Alford Wattley have based their claims of ownership of the Zetlands land on their possession of the property.

Bernadine Forbes' claim

- [10] Bernadine Forbes' claim to possession begins with her aunt Melvina Wattley. Melvina Wattley owned the Zetlands land, having purchased it from York Wilkin in 1935. The purchase is recorded as Deed No. 2479 in Liber C.R. Volume 20 Folios 73-78 in the Register of Deeds. The evidence from Melvina's daughter, Beatha Lipscomb, was that Melvina had bought the Zetlands because it was a suitable residence for her mother Eliza Wattley.
- [11] Bernadine Forbes deposed that she was born in 1934 and she lived on the land from childhood until she left for England in 1958. Other persons including her grandmother Eliza Wattley, her cousin Alford Wattley and his mother Hilda Wattley, also lived on the land. Melvina Wattley had asked Hilda Wattley to stay there and take care of their mother, according to Beatha Lipscomb. Eliza Wattley lived on the land until her death in 1966.
- [12] Before Bernadine Forbes left for England, Melvina Wattley had migrated to the United States and Alford Wattley had moved to live in St. Kitts. He left in the 1950's never to live on the Zetlands land again. Hilda Wattley went to live with Melvina Wattley in 1976 and returned to live in St. Kitts with her son Alford Wattley in 1979.
- [13] According to Beatha Lipscomb, after Melvina Wattley migrated she had visited Eliza Wattley at the Zetlands land, as did Beatha during summers in the 1950's.
- [14] In her first affidavit, Bernadine Forbes claimed that her aunt Melvina and her daughter had sold her the Zetlands, in her supplemental affidavit she indicated that this was a typographical error and Melvina Wattley had in fact given it to her in 1969 because she had recognized her dedication to her grandmother, Melvina's mother. As her mother had died she wanted to give the Zetlands land to Bernadette. She did not however execute a Deed of Conveyance. In her third affidavit, she said it was "in or about the 1970's" that Melvina had given her the Zetlands land.
- [15] She also referred to 1969 and "mid-70's" as the dates that she put her brother Martin Cromwell in charge of the maintenance and the upkeep of the Zetlands land and he had consistently maintained and cleaned the land. He restored the dwelling house

on the land, which was previously the family house. He had been renting out the land and accounting to her for all rents and profits. He had assumed responsibility for the property even when Hilda was alive. In 1985, he began paying the property taxes and Bernadine Forbes exhibited tax receipts from 1990 to 2006.

- [16] Beatha Lipscomb herself stated that her mother Melvina had always made it clear that Bernadine Forbes should get the property because she had taken care of her grandmother.
- [17] On 7th February 2000, Bernadine Forbes conveyed the property to herself by a Vesting Deed recorded in Liber C.R. Volume 62 Folios 1138 to 1141 of the Register of Deeds for the Nevis Circuit. In the Vesting Deed, Bernadine Forbes stated that she had been in possession of the Zetlands as owner “for a period of upwards of thirty years”.
- [18] Bernadine Forbes’ evidence that she had lived on the land as a girl with her grandmother and other relatives until she left for England in 1958, was supported by her cousin Helen Bradley, who is her contemporary. When Bernadine Forbes went to live in England, her grandmother continued to live on the land. Helen Bradley recalled Bernadine Forbes returning to Nevis for a visit in 1969. Her brother Martin Cromwell also recalled that visit. He knew that in the 1970’s, Bernadine Forbes’ husband looked after the land and that one Mr. Powell and Rohan Liburd cleaned it on behalf of his sister. Mr. Powell sold the fruits from the land and the money used to pay the property tax.
- [19] Around 1989, Martin Cromwell rebuilt the house on the land at his sister’s request and rented it out. At the date of his affidavit, which was 2nd February 2004, Martin Cromwell was still in charge of the Zetlands land on behalf of Bernadine Forbes. Emile Wattlely, another cousin basically restated Mr. Cromwell’s role over the years.
- [20] Mr. Theodore Hobson, Barrister at Law and Solicitor, deposed that in 1985, Bernadine Forbes gave him certain instructions regarding the Zetlands land. He confirmed that Beatha Lipscomb had given him instructions to prepare a Power of Attorney to transfer the Zetlands land to Bernadine Forbes. The Power of Attorney was prepared and executed sometime in 1990. In 2000, he prepared a Vesting Deed for Bernadine Forbes in relation to the Zetland land.

Alford Wattlely’s Claim

- [21] Alford Wattlely’s claim of ownership based on possession begins with his mother, Hilda Wattlely. He deposed that she was in possession of the Zetlands land as owner for a period of over 30 years.
- [22] She lived in a partly wooden and partly concrete house on the land. She cultivated the land, growing crops such as vegetables, potato vines, peas, cassava and yams. When she harvested the crops, they were consumed by her household. She stopped cultivating the land in the late 1970’s, when she was no longer able to continue.
- [23] Hilda Wattlely died intestate on 16th June 1980 and Alford Wattlely states that he has been in possession of the Zetlands land as Administrator since that date.

- [24] He obtained Letters of Administration in his mother's estate on 26th July 2003. He holds a Vesting Deed of Assent dated 10th October 2003, which is recorded in Liber C.R. Volume 63 at Folios 2264 to 2292.
- [25] In her affidavit, Alford Wattley's daughter Joycelyn Janet Matthew stated that in 1966, her father sent her and her sister to live with his mother Hilda Wattley in Nevis. At the time Hilda Wattley was living alone at Beach Road on approximately 1 acre of land. She remained there for 11 years and during that time she helped her grandmother to work the land and to harvest the produce. Her father would visit them occasionally.
- [26] In 1977, Hilda Wattley went to the United States and later returned to her Beach Road home. When she fell ill, she moved to St. Kitts to live with Alford Wattley's family and she remained there until she died in 1980.
- [27] Since 1980 and on several occasions annually, she visited the land at Beach Road and taken mangoes, apples, sour sops and avocados on her father's instructions. Her grandmother's house, the one Joycelyn lived in from 1966 to 1977, is still on the land.
- [28] The affidavit evidence of James Levi Hill and James Daniel mirrored that from Alford Wattley and provided no additional information.

The Authorities and Submissions

- [29] The parties referred to several authorities on the law regarding possession which is applicable to this case.
- [30] As the applications by both Bernadine Forbes and Alford Wattley were made under Section 12 of the Act, it is appropriate to start with Section 14(1). Section (14)(1) provides that "possession" for the purpose section 12 shall be possession as owner by a person, his heirs, executors, administrators or assigns and not as an encumbrance holding a life interest or interest for a term of years or other less estate.
- [31] It is an undisputed fact in this case, that Melvina Wattley purchased the Zetlands land in 1935 and that she held the paper title to the property. One important issue in this case would therefore be to consider whether her title had been extinguished at any point in time. That the answer to that question is in the affirmative is the main thrust of Mr. Inset's submissions.
- [32] One of the authorities relied on by Mr. Nisbett was **Wilhelmina McLaren v Leroy Davidson**³, where in comparing how a person with a paper title and a person in possession are viewed by the law, Baptiste J⁴ referred to the judgment of Slade J in **Powell v McFarlane [1977] 38 P&CR 452 at 470** where he said:

"In the absence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus without reluctance ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. If the law is to attribute possession to a person who can establish no proper title to

³ Grenada High Court Claim No. GDAHCV1990/0399 [Unreported]

⁴ Ibid. at para. 8

possession he must be shown to have both factual possession and the requisite intention to possess (animus possidendi)."

- [33] It follows that beginning on 7th day of February 1935 Melvina Wattley was deemed to be in possession of the Zetlands land as the Indenture executed by York Wilkin gave her a prima facie right of possession. Once possession has begun, as in the case of an owner of land with a paper title, who has entered into occupation of it, his possession is presumed to continue⁵ and does in fact continue unless it is: transferred to another person; or lost when it is given up or discontinued⁶. In their claims for possession Bernadine Forbes' asserts that in relation to Melvina Wattley the former position applies and Alford Wattley relies on the latter.
- [34] I will consider the discontinuance issue first. To succeed in a claim for discontinuance, the claimant must prove: discontinuance by the paper owner, followed by possession⁷.
- [35] The evidence presented on his behalf must show that possession was factual and that there was the requisite intention to possess or *animus possidendi*⁸.
- [36] Slade LJ defined factual possession in *Powell v McFarlane*⁹ as single and exclusive possession, signifying an appropriate degree of physical control. It is not sufficient to establish possession concurrent with the paper owner¹⁰. If the person claiming by possession, establishes possession in the full sense of exclusive possession, that by itself connotes the absence of possession on the part of the paper owner¹¹. The question as to what acts would be found to constitute a sufficient degree of exclusive control depends entirely on the circumstances of the each case¹².
- [37] With regard to *animus possidendi*, a claimant must show for the purposes of his claim is not an intention to own or even an intention to acquire ownership. The only intention that must be demonstrated is an intention to exercise control over the land for oneself and to occupy and use it as one's own¹³. The intention must be to unequivocally exclude the world at large, including the owner with the paper title, so far as is reasonably practicable and as the process of the law will allow¹⁴. However, there need not be a conscious¹⁵ or deliberate¹⁶ intention to exclude the paper owner, just an intention to exercise exclusive control.

⁵ JA Pye (Oxford) Ltd. et al v Graham et al [2003] All ER 865 at para. 70

⁶ Ibid.

⁷ Treolar v Nute [1977] 1 All ER 230 at 234

⁸ See Note 2

⁹ [1977] 38 P & CR 452 at 470, 471

¹⁰ See Note 7

¹¹ Ibid.

¹² See Note 9

¹³ See Note 4 at para. 71

¹⁴ See Note 9

¹⁵ See Note 13

¹⁶ Ibid.

- [38] Both factual occupation and animus possidendi must be proven, as Lord of Craighead clarified in *JA Pye [Oxford] Ltd. et al v Graham et al*¹⁷: “*occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action... as they are bound up with the other... the best evidence of intention is frequently found in the acts which have taken place*”¹⁸.
- [39] Mr. Nisbett’s submission was that Melvina Wattley had discontinued possession of the Zetland’s land and that the principles in *Treolar v Nute*¹⁹ applied in this case. The point of his submission being that Alford Wattley claiming through Hilda Wattley could establish possession in the full sense of exclusive possession. Bernadine Forbes had failed to refute that Hilda Wattley had lived on the Zetlands Land from 1935. She had continued to live there after her mother Eliza Wattley died in 1966. Two of her grandchildren lived with her on the property for eleven years from 1966. She went to the United States for a period of time but she had returned to live on the property.
- [40] She had clearly shown her intention to occupy and use the land as her own and had done so for thirty years or more. Not only had she been in exclusive possession but her possession of the Zetland’s land could not be disputed because by cultivating the land and living there peacefully, she had assumed the character of owner and peaceably exercised the ordinary rights of ownership and that gave her a perfectly good title against all the world but the rightful owner²⁰. Melvina Wattley, the only person who could have interrupted her possession had not done so. Melvina Wattley never lived on the property and had not taken steps to evict Hilda Wattley even after their mother had died as such as the rightful owner, she did not come forward and assert her title and her right was forever extinguished²¹. In the circumstances, Hilda Wattley, in the capacity of possessory owner, had acquired an absolute title in the property. Mr. Nisbett concluded his submission invite the court to conclude that Alford Wattley had continued in possession of the Zetlands Land and in his capacity as administrator of his late mother’s estate or as the only person entitled share in her intestacy, he was entitled to a Certificate of Title.
- [41] Mrs. Walwyn’s main argument regarding Alford Wattley’s claim was that it must fail because the evidence did not support his case. He had not explained how his mother became seised in ownership of the Zetlands land and that there was no conclusive evidence as to when she went into possession. Even if it had been proven that Hilda went into possession that would not be sufficient because possession by itself is not enough to give title, it must be adverse possession²². The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him²³. Her argument that the principle as enunciated by Lord Denning could not apply to this case because if Hilda Wattley had in fact entered into possession she did so Melvina’s Wattley permission and approval and she could

¹⁷ See Note 4

¹⁸ *Ibid.* at para. 70

¹⁹ *Supra.*

²⁰ *Perry v Clissold* [1907] AC 73 at 79

²¹ *Ibid.*

²² *Wallis’s Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd* [1974] 3 All ER 575 at 580 per Lord Denning

²³ *Ibid.*

not therefore make a claim of adverse possession. She relied on the dictum of Lord Millet stated in Trinidadian case of *Goomti Ramnarace v Harrypersad Lutchman*²⁴ “*adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse it is enjoyed by a lawful title or with the consent of the true owner*”. The court would therefore have to determine whether Hilda Wattlely was in possession of the Zetlands land with or without Melvina Wattlely’s consent²⁵.

- [42] Mrs. Walwyn further submitted that to establish discontinuance, Alford Wattlely would have to show positively, that Melvina Wattlely, the true owner, had gone out of possession of the land, and that she had left it vacant with the intention of abandoning it²⁶ and there was no evidence that Melvina Wattlely had done either.
- [43] According to Mrs. Walwyn, the court should rule in favour of Bernadine Forbes because the evidence presented on her behalf showed that she had satisfied the provisions of section 12(1) (d) of the Act. After her aunt Melvina Wattlely gave her the Zetlands land in 1969 or the 1970’s, although there was no formal transfer, Bernadine had gone into possession as owner in the 1970’s. From that period she had her brother, her husband and Rohan Liburd look after the property. She claims to have paid taxes on the land since 1985 and exhibited tax receipts from 1990 to 2006. In 1989, she had the house on the land renovated and it was rented out to tenants from 1990 to 2002.

The Findings

- [44] There is one matter in Mrs. Walwyn’s written submissions that ought to be dispelled at the outset and that is that Bernadine Forbes and Hilda Wattlely were in possession of the Zetlands land at the same time. Exclusivity is the essence of possession and the rule is that only one person can be in possession at any one time²⁷. In this case at any given time Melvina Wattlely or Bernadine Forbes or Hilda Wattlely or her successor in title, Alford Wattlely was in possession of the Zetland’s land, there could be no overlapping of possession.
- [45] I will first consider Alford Wattlely’s case which rest entirely on Hilda Wattlely’s possession of the Zetlands land. Alford Wattlely, James Levi Hill and James Daniel all deposed that the Zetlands land was owned by Hilda Wattlely, who died in 1980 and prior to her death she was in possession of the land as owner for a period of 30 years and upwards. That is how Hilda’s connection to the property commences, she “owned” it, nothing is said about how she came to own it. Joycelyn James Matthew stated that Hilda Wattlely had told her that she had been living on the land since 1935 “when it was bought”. Nothing was stated about when it was bought or by whom.
- [46] The documentary evidence shows that it was Melvina Wattlely, who bought the land from York Wilkin in 1935. Melvina Wattlely is mentioned only in the affidavit filed by Joycelyn Janet Matthew, when she said her grandmother Hilda Wattlely had travelled to the United States to take care of her sister Melvina Wattlely, at Melvina’s request.

²⁴ Privy Council Appeal No. 8 of 2000

²⁵ Theresa Thomas v Agnita Alexander [Unreported] Claim No. GDAHCV2001/0035 at para. [23]

²⁶ Archer v Georgina Holding Ltd. [1974] 21 WIR 431 at 436

²⁷ Ibid.

- [47] There are certain aspects of the evidence that remain uncontroverted and which I accept: that Melvina Wattley was the title holder of the Zetlands land; that she bought the property because it was a suitable location for her mother; that Melvina Wattley had asked Hilda Wattley to live on the property to take care of their mother; and that Hilda Wattley had lived on the property.
- [48] That being the state of the evidence, Alford Wattley would have to prove how Hilda Wattley came into possession of the Zetlands land as owner because according to the judgment in the *Goomti Ramnarace*²⁸ case, possession is not normally adverse if it is enjoyed with the consent of the true owner. On the evidence it would place her in the position of a licensee as described by the Privy Council²⁹ relying on the dictum of Denning LJ in *Faachini v Bryson* (1952) 1 TLR at page 1389 where he said:
- "In all the cases where an occupier has been held to be a licensee there has been something in the circumstances such as a family arrangement, an act of friendship or generosity or suchlike, to negative any intention to create a tenancy".*
- [49] There is no evidence that Hilda Wattley lived on the Zetland's land other than with Melvina Wattley's consent. The evidence that she cultivated the land or that she had her persons live there does not change her status either when she came to live there at some undetermined time or after her mother Eliza died in 1966.
- [50] Where there is an undisputed title holder of land, if a claimant is to succeed, as Lord Browne-Wilkinson made it abundantly clear in *Pye*'s³⁰ case he would have to prove on the evidence that the title holder was dispossessed. Slade LJ clarified in *Powell*³¹ that "dispossession" means nothing more than where land is possessed without the consent or license of its registered owner. In my judgment, Alford Wattley cannot succeed because by failing to even mention Melvina Wattley in any capacity in relation to the land, there is no evidence that his mother Hilda Wattley dispossessed any person including Melvina Wattley, so he is unable to rely on that claim. It formed part of the submissions but there was no evidence in support.
- [51] On the allegation of discontinuance, the state of the evidence is similar. Nothing is said of Melvina Wattley in relation to the land, so there is no evidence adduced that she discontinued her possession.
- [52] Adverse possession is a question of fact³² and its basic principles as established in *Powell*³³ are that the claimant having no paper title must show both factual possession and the requisite intention to possess. There is evidence that while Hilda Wattley lived on the land she cultivated it and after 1966, she had her grandchildren live in the house on the land. Whether or not these acts constitute a sufficient degree of exclusive control of the land depends on the circumstances. However, one critical aspect of factual possession is exclusive possession coupled with the absence of the owner's consent and on the evidence in this case, this aspect cannot be proved

²⁸ Supra

²⁹ Ibid. at para. 8

³⁰ Supra.

³¹ See Note 8

³² See Note 21

³³ See para. [29] of this judgment

because she had Melvina's consent. It is therefore unnecessary to examine whether Hilda Wattley had the requisite animus possedendi because both conditions must be satisfied.

- [53] On reviewing the authorities and the evidence, I must dismiss Alford Wattley's claim that he is entitled to ownership of the land based on possession. Hilda Wattley, through whom he claims, was throughout the time she lived on the Zetlands land nothing more than a licensee and at no time was she in possession as owner of the land.
- [54] I now turn to Bernadine Forbes' claim, which is now based entirely on the fact that Melvina Wattley gave her the Zetlands land sometime in the 1969 or the 1970's and from that time, she went into possession as owner. The principles enunciated in **Powell**³⁴ equally apply to Bernadine Forbes' claim. The evidence from Bernadine Forbes, Martin Cromwell and Emile Wattley was that from the 1970's she had persons take care of the land, they cleaned it and harvested the fruits. The evidence that she had started to pay the taxes on the land in 1985 remains unchallenged. Alford Wattley who deposed that he exercised all ownership rights over the land after his mother died in 1980 gave no specific details of his acts of ownership.
- [55] Beatha Lipscomb was an important witness regarding Bernadine Forbes' claim because she affirmed Bernadine's position that Melvina Wattley wanted her to have the Zetland's land, this the platform on which she laid her claim. However, I have to agree with Mr. Nisbett that Beatha Lipscomb never stated that Melvina Wattley had given the land to Bernadine Forbes. The communications between Mr. Hobson and both Bernadine Forbes and Beatha Lipscomb and the instructions given by him confirm that was the position. It was after Melvina died that Beatha assured Bernadine that she had no interest in the property. Her exact words were "*[m]y mother always made it clear that if anyone was to receive the property it would be Bernadine Forbes, because she was very attentive towards my grandmother and gave sacrificially of her time. That after my mother's death in 1982, I reassured Bernadine Forbes that the property would be hers as I had no intention whatsoever of returning to live in Nevis and knew also that my children were also not interested in residing in Nevis. That I have expressly told my cousin Alford Wattley on more than one occasion that I had given the land in question to Bernadine [my emphasis] as she was the one who lived there and helped to take care of my grandmother*".
- [56] I listened to and observed Beatha Lipscomb very carefully, she was a fountain of information, extremely forthcoming in full support of Bernadine Forbes and in my judgment if Melvina Wattley had in fact given Bernadine Forbes the Zetlands land whether in 1969 or the 1970's, Beatha would have said so, either in her affidavit or at some point when she was cross-examined or re-examined.
- [57] In my judgment, Bernadine Forbes like Beatha Lipscomb knew that Melvina Wattley wanted her to have the land. With that understanding, Bernadine chose to do certain things in relation to the land, knowing that one day it would be hers. However, Bernadine Forbes has rested her claim entirely on the basis that Melvina Wattley gave her the land in 1969 or the 1970's and I am not satisfied on the evidence that this

³⁴ At para 36

was in fact in the case, when I consider the evidence given by Beatha Lipscomb, evidence which I accept as being credible.

- [58] I have no basis therefore to accede to Bernadine Forbes' claim that she had been in sole and undisturbed possession for a period upwards of 30 years.

Order

- [59] For the reasons that I have stated I make the following orders:

1. The Registrar of Titles is to cancel the following:
 - [i] The First Certificate of Title granted on 6th December 2004 and issued to Bernadine Forbes as recorded in Register Book 42 Folio 449 in the Register of Titles;
 - [ii] The First Certificate of Title granted on 6th June 2006 and issued to Alford Wattley as recorded in Book 44 Folio 161 of the Register of Titles.
 - [iii] The Vesting Deed recorded in Liber C.R. Volume 62 Folios 1138 to 1141 in the Register of Deeds for the Nevis Circuit.
 - [iv] The Vesting Deed dated 10th October 2003, which is recorded in Liber C.R. Volume 63 at Folios 2264 to 2292.
2. That the Zetlands land is to fall to the Estate of Melvina Wattley, Deceased.
3. That Bernadine Forbes and Alford Wattley are to bear their own costs in these proceedings.

IANTHEA LEIGERTWOOD-OCTAVE
High Court Judge [Ag]