

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2009/0118

BETWEEN:

[1] ISIDORE DAVIDSON
[2] GINERVA DAVIDSON

Claimants

and

[1] AGNITA LOUISON
[2] BRENDA LOUISON

Defendants

Before:

The Hon. Mr. Ephraim Georges

High Court Judge [Ag.]

Appearances:

Ms. Veronica Barnard for the Claimants

Mr. Sylvester Anthony for the Defendants

2010: January 21;
February 5;
2012: August 24.

JUDGMENT

[1] **GEORGES J [AG]:** By fixed date claim form filed 4th February 2009 the claimants claimed against the defendants:-

- (1) possession of premises registered in the Land Registry as Block 1251B 776;
- (2) damages for use and occupation of the premises at the monthly rate of \$100.00 from 30th June 2006 to 30th January 2009 in the sum of \$3100.00;

- (3) damages for use and occupation of the premises from 31st January 2009 until possession is given up at the monthly rate of \$100.00;
- (4) interest on any sums found due to the claimants at the rate of 6% per annum from 30th January 2009 until the date of payment; and
- (5) costs.

The Pleadings

- [2] In their statement of claim the claimants allege that they were the owners with absolute title to a parcel of land situate at Piat in the Quarter of Gros-Islet registered as Block 1251B 776 which was surveyed and clearly demarcated by iron and concrete pegs as shown by a Plan of survey by Foche Modeste Licenced Land Surveyor dated 14th December 1994 and lodged at the Survey Office on 15th May 1995 as Drawing No. G.I. 3445 Record No. 222/94.
- [3] The claimants further allege that they purchased the said parcel of land as appears by Deed of Sale dated 12th July 1995 and registered on 2nd August 1995 as Instrument No. 2849/95 on which the defendants have erected and own a small concrete shed and wooden hut.
- [4] On purchasing the said land in 1995 the claimants aver that they allowed the first named defendant and her husband (since deceased) to retain the said hut and shed on the land until such time as they the claimants would be ready to develop it. They (the defendants) agreed to the arrangement and also agreed to remove the said hut and shed on the claimants' request.
- [5] Since the death of the first named defendant's husband (formerly a butcher) some years ago and until December 2008 the claimants aver that the defendants carried on no activity in the said hut and shed. On or about December 2005 the second named defendant began selling cooked food in the wooden hut.
- [6] On 28th February 2006 the claimants allege that they gave notice to the defendants to vacate the parcel of land by 30th June 2006 failing which a rental of

\$100.00 per month would be payable for each and every month that they remained in possession.

[7] The claimants allege that the defendants failed and refused to vacate the said premises and on 30th October 2006 the claimants state that they again gave notice to the defendants to vacate the said land and again on 1st June 2007 gave them notice to quit their property but the defendants have failed and refused to do so and have also failed to pay any rent due to them and are accordingly indebted to them for damages for use and possession of their land.

[8] The claimants as a result claim possession of the premises registered in the Land Registry as Block 1251B 776, damages for use and occupation of the premises at the monthly rate of \$100.00 from 30th June 2006 to 30th January 2009 in the sum of \$3,100.00; damages for use and occupation of the premises from 31st January 2009 until possession is given up at the monthly rate of \$100.00; and interest on any sums found due to them at the rate of 6% per annum from 30th January 2009 until the date of payment.

The claimants also seek a mandatory injunction compelling the defendants to remove all structures placed on their land registered as Parcel 1251B 776.

Defence

[9] In their defence the defendants deny that the Claimants are the owners with absolute title of the land in question (hereinafter referred to as Parcel 776) and contend that since on or about 1945 the first defendant and the second defendant's father George Louison began to occupy the said land and constructed their home and a concrete shed which was used as a butcher's shop and a wooden structure where the second defendant operated a shop. They also claim to have planted and harvested bananas on the said land.

[10] The first defendant also alleges that the second defendant's father (George Louison) and herself brought up their six children including the second defendant there and that she (the first defendant) and the second defendant's father

(George) reared and slaughtered animals on the land in question and that they have been in sole and undisturbed occupation and possession for more than thirty years. The defendants further contend in paragraph 1(vi) of their defence that there is an error in the Land Register in respect of the said land and that the first defendant and George Louison ought to be registered as proprietors thereof.

- [11] The defendants further allege that since their occupation of the land they had never been given notice of the survey which the Claimants alleged was carried out in respect of the said land (Parcel 776). The defendants however admit that the Claimants did purchase Parcel 776 as stated at paragraph 3 of the statement of claim but contend that this was subject to their right of occupation of the Land adding that they owned a concrete shed and a wooden structure (hut) thereon which the first defendant and the second defendant's father (George Louison) had been in occupation and possession of since 1939 the first defendant declared.
- [12] The first defendant denies that on purchase of Parcel 776 by the Claimants in 1995 that the Claimant purchasers allowed the first named defendant and her husband to retain the hut and shed on Parcel 776 until they were ready to build and that she and her husband (since deceased) had agreed to remove them from the land.
- [13] In the alternative, if which is denied, the Claimants agreed with the first defendant and the second defendant's father to permit them to retain the structures on the land, the first defendant and the second defendant's father were occupying the land as tenants at sufferance and they were therefore entitled to remain in possession until they were compensated for improvements to the land.
- [14] The defendants reiterated in paragraph 6 of their defence that the first defendant and the second defendant's father (George Louison) entered into and remained in possession of the land since or about 1945 and that the first defendant's husband died on 6th March 1994 but the first defendant and the second defendant (their daughter) continued their occupation of the land to the present time.

[15] I pause here to mention that in paragraph 6 of their defence the defendants state that the first defendant and the second defendant's father entered into and remained in possession of the land since 1945 whereas the second defendant in paragraph 4 of her witness statement states that she was born in Piat not too far from the property (Parcel 776) in 1966. How then could she assert in paragraph 6 (i) of the defence that her mother (the first defendant) and her father entered into and remained in possession of the land since or about 1945 – she having been born on her own admission in 1966 that is to say 21 years later. That is to my mind a serious flaw in her testimony on the issue of the commencement of the defendants' possession and occupation of the land.

[16] The defendants admit that they were duly given notices by the Claimants to quit the land on the four occasions stated in paragraphs 6 and 7 but contend that such notices were not lawful and were of no effect. They consequently deny liability in debt and/or for damages for use and possession of the land as alleged or at all. They prayed that the Claimants' statement of claim should consequently be dismissed with costs.

Counterclaim

[17] By way of counterclaim the defendants maintain that the first defendant and the second defendant's father had been in sole and undisturbed ownership of the land for over thirty years or alternatively that they were in occupation with the permission of the Claimants and their predecessors in title and were thus tenants at sufferance and that by virtue of Articles 372 and 374 of the Civil Code they were entitled to be reimbursed for improvements made to the land and to retain it until reimbursed and paid for any consequential loss or damage suffered.

[18] The defendants accordingly counterclaim:

- (1) That the first defendant and George Louison (at present deceased) be declared the owners of the land by virtue of their sole and undisturbed occupation thereof for more than thirty years.

- (2) For a declaration that there is an error in the Land Register and that an order for rectification be made by entering the first defendant and George Louison as proprietors.
- (3) In the alternative, compensation for the value of the improvements made to the land (sic).
- (4) Further and in the alternative that an order for possession of the Land be made until the defendants have been reimbursed.
- (5) Costs.

Reply to Defence and Counterclaim

- [19] In their reply to the defendants' Defence to Counterclaim the Claimants essentially denied that either the first named defendant or George Louison ever occupied Parcel 776 and reiterated that only a concrete shed and a wooden hut are erected on Parcel 776 (that is their land) and that George Louison only slaughtered animals on Christmas Eve and occasionally on a Saturday for retail sale.
- [20] The Claimants further refuted that there was any dwelling house or home erected on Parcel 776 as alleged by the defendants or that cultivation of bananas or any other crops or vegetables occurred there. Only wild shrubbery indigenous to the Gros Islet area thrived there the Claimants declared and the defendants never in fact resided there. They and George Louison in actual fact the Claimants elaborated always resided on land opposite Parcel 776 believed to be Parcel 1251B 424 with a public main road separating the two parcels of land the Claimants explained.
- [21] The second named Claimant aged 53 in 2009 was said to have been born at Piat Grand Riviere and was extremely familiar with the said parcels of land frequently walking the road which adjoined Parcel 776.
- [22] George Louison it was alleged had a wooden butcher shop in 1986 at Grande Riviere Gap and rented the land from Gary Auguste. A butcher's stall was built around 1989 at which time it is alleged the first named Claimant Isidore Davidson

rented Parcel 776 from Joseph Gaspard who eventually sold it to the Claimants Isidore and Generva Davidson. When Gary Auguste gave George Louison notice to quit his land, it was then that George Louison built a concrete butcher shop on Parcel 776 – the Claimants' land and later constructed a wooden shed from where the first defendant cooked food for sale when George Louison slaughtered animals.

[23] The Claimants further assert/contend that no claim was ever made by the defendants or George Louison to the Land Registration Titling Project in relation to Parcel 776.

[24] The Claimants further allege that in 1986 and 1995 when Joseph Gaspard subdivided his land, there was no dispute recorded in respect of the surveys which had been undertaken by him. George Louison died on 6th March 1994 up to which date the Claimants allege neither he nor the defendants ever disputed their title to Parcel 776 or lay claim to possession thereof.

[25] The Claimants accordingly deny the defendants' counterclaim in its entirety and pray that it be dismissed with costs.

Reply to Defence to Counterclaim

[26] In support of the claim by the defendants that the first defendant and the second defendant's father (George Louison) cultivated bananas on a portion of Parcel 776 the defendants disclosed that George Louison had in actual fact taken a loan to assist such cultivation but there is no reference to land owned by George Louison in the Bill of Sale (Exhibit BL1) the loan in respect of which is secured by a **schedule of chattels and things owned by the Borrower George Louison.** [Emphasis supplied]

[27] Again apart from the "say so" at paragraph 4 of the defendants' reply to defence and counterclaim there is no supporting evidence to sustain the defendants assertion that the first defendant and the second defendant's father (George

Louison) at all material times occupied both Parcel 1251B 442 and Parcel 1251B 776 as owners as they had alleged.

The Evidence

- [28] In support of their claim the claimants produced in evidence a Deed of Sale dated 12th July 1995 and registered on 2nd August 1995 as Instrument No. 2849/95 (Exhibit GD1). The second named claimant Ginerva Davidson also produced a picture of what she described as “two little shops” which she said belonged to Brenda, the second named defendant (Exhibit GD2).
- [29] Ginerva Davidson went on to disclose that she and her husband in 1991 went to see a Mr. Evariste Gaspard who owned land in the Piat area near their home and sought permission from him to rent them a piece of land for the purpose of building a mechanic’s garage to which he agreed.
- [30] In 1993 Mr. Gaspard told them that he was going to survey the land and cut them into house lots and sold them the lot at the end of the land where her husband and herself noticed two little shops which belonged to George Louison – one of which Mr. Louison used to slaughter animals and the other to cook food for sale when he slaughtered which was occasionally.
- [31] She and her husband she said bought the land in 1995 by Deed of Sale (Exhibit GD1) registered as Instrument No. 2849/95. Her husband and herself she declared at paragraph 5 of her witness statement, thereupon informed George Louison and his wife and told them of their intended purchase of the lot after Mr. Gaspard had surveyed the land but that they would be allowed to stay until they (the claimants) were ready to move on to it. They both agreed according to Ginerva Davidson but alas George Louison died before Mr. Gaspard had in fact surveyed the land.
- [32] In paragraph 6 of her witness statement Ginerva declared that after Mr. Gaspard had surveyed the land, she and her husband visited Agnita Louison, the first named defendant and widow of George Louison and they spoke about the

agreement that she and her husband Isidore had had with her husband George and herself and there was no problem. Agnita Louison she said in fact confirmed that the two shops would be demolished whenever she and her husband were ready since they themselves were doing nothing there except slaughtering during the Christmas season and occasionally on a Saturday.

[33] According to Ginerva in 2006 her husband Isidore went to see Agnita to inform her that they were ready to move and it was then that she (Agnita) allegedly told him that the two little shops belonged to her daughter Brenda the second named defendant following which her husband the first named claimant arranged to meet with Brenda and in fact met with her and her eldest sister at Agnita's home one afternoon.

[34] According to Ginerva, Brenda acknowledged that the land belonged to Ginerva's husband Isidore and Ginerva Davidson since the lawyer had told her so whereupon Brenda asked her husband Isidore to sell her the land. She also asked them (the claimants) to estimate the value of the two little shops since they (the defendants) were willing to pay for the wooden one because they realized that her mother was sick and that might help.

[35] On another occasion Brenda allegedly told both claimants to send her notice which they (the claimants) in fact did through the late Sir John Compton. The said notice to quit dated 28th February 2006 (Exhibit GD3) gave Brenda three months to leave the land failing which she would have to start paying rent at \$100.00 per month which she never in fact paid. She later began saying that the land was her father's land (that is George Louison) but there is no evidence showing that he ever in fact claimed it.

[36] Ginerva Davidson alleged that she and her husband had a meeting with Brenda their own lawyer Sir John Compton and Mr. Gaspard's daughter at which she (Brenda) accused Mr. Gaspard of stealing their land and accused them of having a meeting without her lawyer.

- [37] In paragraphs 9-14 of her witness statement Ginerva Davidson confirmed that she and her husband were the owners with absolute title of the parcel of land situate at Piat in the Quarter of Gros Islet registered as Block 1251B 776 on which two little shops are located.
- [38] The said land was surveyed and clearly demarcated by iron in concrete pegs as shown in a plan of survey by a licenced land surveyor and dated 14th December 1994 and lodged at the Survey Office on 15th May 1995 as Drawing No. 222/95 (Exhibit GD1). None of this has been disputed or challenged in any satisfactory manner whatsoever in my considered view.
- [39] Mr. Davidson averred that the defendants have steadfastly failed and refused to vacate the premises and on 30th October 2006 were served a further notice to quit the said land (Exhibit GD5). On 1st June 2007 yet another notice was served on the defendants to quit the land but they again failed and refused to comply or to pay the stipulated rent.
- [40] The Claimants accordingly claimed the rent due to them by the Defendants for use and occupation of the premises at the monthly rate of \$100.00 from 30th June 2006 to 30th January 2009 viz \$3,100.00 and damage for use and occupation thereafter until delivery up of possession at the rate of \$100.00 per month plus interest at the rate of 6% per annum from 30th January 2009 until date of payment and costs.
- [41] In cross-examination Ginerva Davidson one of the two claimants and a principal witness as such said that she knew George Louison all her life and she was then 54 years old. He began occupying the land which she now claimed from 1986. She lived at Piat Grande Riviere she revealed and she and her husband the other claimant bought the land from Mr. Evariste Gaspard. They initially rented from him from 1991 and owned a mechanic garage when he later told them that he was going to survey the land by lots and did so in 1993.

- [42] The witness statements of Isidore Davidson the first named claimant and his wife Ginerva largely correspond with each other regarding their acquisition by Deed of Sale of the land in question from Mr. Evariste Gaspard in 1995 and registered as Instrument No. 2849/95 and later registered in the Land Registry as Parcel 1251B 776 (Exhibit GD1) in both their names.
- [43] Both claimants stated that when they purchased the land on 12th July 1995 a shed and a wooden hut were already built on it which belonged to the second named defendant Brenda Louison and her father George Louison who died on 6th March 1994.
- [44] The claimants both asserted that they had enjoyed a good relationship with Mr. Louison and so they agreed to permit the two structures to remain on their land until they were ready to move there. Both claimants further asserted that no cultivation was ever carried out on the said land and the structures were only used by the defendants at Christmas and on occasional Saturdays when animals were slaughtered for retail and food was cooked for sale by the second named defendant. This however declined after George Louison (a butcher) died in March 1994.
- [45] The evidence revealed that when the claimants decided to build on their land and requested the defendants to remove the two structures and render vacant possession of the land which they had been occupying they refused and ignored four notices to quit given by the claimants' lawyer and refused to pay rent in respect of their continued use and occupation of the said land. They (the defendants) in fact demanded reimbursement for improvements to the land and compensation for consequential loss and damage suffered.
- [46] Brenda Louison the daughter of George Louison deceased and Agnita Louison furnished a 14-paragraph witness statement dated 28th July 2009 exhibiting a Bill of Sale by her father George dated 29th October 1976 (**Exhibit BL1**) to which reference has been made at paragraph 26 of the judgment. Also displayed are nine "Permits to Slaughter" granted to her mother Agnita Louison, spanning the

period 11th January 2000 to 7th October 2000 and marked together as **(Exhibit BL2)**. Agnita Louison herself gave no evidence on account of her age (87 years) and being then bedridden. A power of attorney (Exhibit BL3) was executed by her on 16th May 2007 in favour of Brenda also known as Caroline.

[47] A copy of the death certificate of George Louison was displayed as **Exhibit BL4**. The witness referred to a Notice to Quit dated 28th February 2006 to which she said her legal representative replied on 22nd June 2006 **(Exhibit BL5)** acknowledging that she was in occupation of lands at Piat in the Quarter of Gros Islet which she said she had always known to belong to her father (George Louison) and that the notice in question had not identified which parcel of land she was to quit and deliver up possession of and requested particulars.

[48] By letter dated 27th June 2007 **(Exhibit BL6)** the defendants' attorney confirmed that they defendants were in occupation of lands in Piat Gros Islet which they claim they always knew belonged to George Louison. They further contended that if as the claimants allege they have occupied the property with their permission and that they (the defendants) have since made improvements to the land they would be entitled to remain on it until they are paid for the improvements made. That in fact is the nub of the defendants' case. Indeed they hoped to resolve the matter without the need for litigation their attorney intimated in concluding his letter. Efforts to achieve that evidently failed and suit was consequently filed by the claimants.

[49] Three other witnesses filed brief statements and testified. Linda Emilien a daughter of the first defendant Agnita and sister of Brenda the second defendant said she was 58 years old and in or about 1959 when she was 8 years old she went to live with her mother Agnita and George Louison her stepfather at Piat.

[50] From then she claimed that she helped "cultivating the Property" by planting bananas, peas, yam and plantain. She elaborated by saying that in 1976 George "cleared the Property" by cutting trees and bushes and that he and his wife made coals and planted bananas thereon. She further related that Agnita and herself

assisted in carrying bananas from the Property to the banana shed where they were sold to Geest.

[51] During 1982 she deposed George and Agnita erected a concrete structure on the Property where they slaughtered animals and sold meat to the public. Brenda, the second defendant then constructed a small shop where she allegedly sold stewed and roast meat every weekend. Oddly only eleven permits to slaughter animals were issued in the name of Agnita Louison between **11th January 2000 and 7th October 2000** and exhibited as BL2.

[52] Under cross-examination Linda Emilien also known as Beatrice told the Court that she knew Evariste Gaspard but never knew him to own land where the butcher shop is. She did not know if he owns or owned land in that area but she knew that he sold land next to where the butcher stall is. It was more than one piece of land she added but she did not know how many he sold but it was more than one. She knew that her mother Agnita and George Louison were the sole owners of the land where they lived. They did not however show her any papers to that effect she agreed.

[53] She was not aware she said that the claimants had sent notices to quit the land to her mother Agnita and her sister Brenda between whom there was always a good relationship. They did not tell her that the claimants Isidore and Ginerva Davidson had sent them a notice in 2006. Nor did they tell her that a police officer brought them a notice in 2006. She repeatedly emphasized that she was speaking the truth. Neither of them told her anything of the kind she reiterated adding that her sister (Brenda) does not have to tell her anything.

[54] She went on to admit that when her father (George Louison) died somebody helped her mother to slaughter and it is true that after her stepfather died somebody helped her mother to slaughter at Christmas and Jounen Creole. She concluded by saying that she had started from age 8 to help her parents plant yam, peas, plantains, bananas etc. but acknowledged that it was Mr. Louison who

was the farmer in the family and that after her stepfather died her mother continued to plant but the farm went down when her mother fell sick.

[55] Paul Richelieu of Grande Riviere furnished a brief witness statement in which he stated that he knew the claimants and the defendants and that he himself was the grandson of Placide Regis who owned lands which bounded with lands of George Louison and Agnita Louison. He knew and was very familiar with a portion of land situate at Piat Grande Riviere in the Quarter of Gros Islet and registered as Parcel 1015B 776. This in fact is the property/land on which the controversy centres.

[56] Mr. Richelieu declared that he was born on 27th August 1951 and that from the time that he was a child he frequented the home of George and Agnita Louison. From age 12 to age 22 he assisted them in carrying bananas from their Property to the banana shed in Grande Riviere where they were sold to Geest. It was sometime in 1982 he revealed that Agnita erected a concrete structure on the property which they used to slaughter animals and sold meat to the public. Brenda (Agnita's daughter and the second defendant herein) then constructed a small shop he said where she sold stewed and roast meat every weekend.

[57] Mr. Louison continued to occupy the land he said until his death in 1994 where Agnita and Brenda continued to remain in occupation after Mr. Louison's death. He had always known the property he reiterated to belong to George and Agnita Louison and was surprised he said that the claimants now laid claim to it.

[58] In cross-examination the witness attested that he knew where Agnita Louison lived which he said was on a road adjacent to a butcher's stall and a wooden house and that it would be true to say that she has lived there over 30 years from when he was a boy. There were bananas around their home he added. By this he meant that they cultivated plantains and yams around their home as well as bananas around the butcher's stall adding that he had seen them with his own two eyes and had seen over 300 banana plants. One would not see that now he hastened to add nor were there plantain cultivations. All that remained there after Mr. Louison died was the concrete structure and the wooden house Mr. Richelieu declared.

The Issues

[59] The issues which fall to be determined as I see them are:

- (1) Whether the defendants have acquired a prescriptive title or interest to the said land.
- (2) Whether there are any errors in the registration of the Claimants' title in the Land Registry.
- (3) Whether the defendants have made any improvements to the Claimants' land, if so to what value.
- (4) Whether the defendants are entitled to remain in possession of the Claimants' land.

The Law

[60] In her closing arguments Ms. Veronica Barnard learned counsel for the claimants referring to section 23 of the **Land Registration Act (LRA) 1984** pointed out that:

"subject to sections 27 and 28 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject:

- (a) To the leases, hypothecs and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) Unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register."

"Section 28: Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register.

- (a) Servitudes subsisting at the time of first registration under this Act;
- (b) Servitudes which arise from the situation of the property or which have been established by law;
- (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed.”

The Land Registration and Titling Project

[61] This required all landowners and persons having an interest in land in 1986 to make a claim to such land within a specified period following which the claim would be noted in the Adjudication Record of the parcel. Learned counsel submitted that neither the defendants nor the deceased (George Louison) who it is alleged “owned” the land ever made such a claim. There is no notation or other noting on the record and the defendants have failed to adduce any evidence of ever having made a claim whatsoever whether as owner, occupier or otherwise.

Overriding Interest: Section 28(g) LRA 1984

[62] Counsel for the claimants went on to submit that the defendants were never in possession of the land as suggested. In cross-examination the second named defendants Brenda Louison and her witnesses all admitted that the first named defendant Agnita Louison and her husband George resided and **to this day the first named defendant continues to reside on land opposite the structures with the main public road separating them.** This in fact was the thrust of the claimants’ argument at paragraphs 5 of their reply and defence to counterclaim and paragraph 20 of the claimant’s witness statement. [Emphasis supplied]

[63] Consequently the deceased George Louison and the first defendant it was submitted were no more than bare or gratuitous licencees and had no right that could possibly be protected as an overriding interest under section 28(g) LRA. I fully agree. In the Court of Appeal Edwards, JA [Ag.] (as she then was) in **Andre Winter et al v Charles Richardson**¹ applying the dicta of Lord Hodson in **National Provincial Bank Ltd. v Ainsworth**² held that:

¹ HCVAP 2006/025

² [1965] AC 1175

"The rights of a person in actual occupation under section 28(g) of the Registered Land Act Cap 374 (the Act) are not protected as an overriding interest where that person is a bare or gratuitous licensee. The respondent, who was inferred to have been a bare or gratuitous licensee, did not have a right which could be protected as an overriding interest. Further, a gratuitous or bare licensee is revoked by the death of the licensor/licensee or by an assignment of the land over which the license is granted."

The clear conclusion to be drawn from this is that the defendants being bare licencees have no "right" to be protected. All they had was a bare licence which was revoked by the Notices to Quit issued and served on them in 2006.

[64] It is patently clear that the defendants not having "the paper title" referred to by the Court of Appeal in **Andre Winter et al** that is "the legal title" the registered owner remains the owner of the legal title. Although being in actual occupation the defendants have no rights to be protected bearing in mind that on purchase of the land (Parcel 776) the claimants made enquiries and allowed the defendants to keep their two small structures there until they (the claimants) were ready to build. The first named defendant Agnita Louison did not submit a witness statement (she could have since the second named defendant Brenda was her duly constituted Attorney) but they chose not to do so.

[65] Further, the evidence of the claimants that they spoke to the deceased George Louison and his wife Agnita that they would be permitted to remain on the land until they were ready for it remains undisputed by the defendants and none of the witness statements filed by the defendants or under cross-examination is there any dispute as to that fact.

Prescriptive Title

[66] The defendants allege that Agnita and George Louison had acquired the land since 1945 (notwithstanding that the second defendant (Brenda) said that she was born in 1966). The claimants pointed out that it was impossible for the deceased (George Louison) to have occupied the land in 1945 since he would have been only 16 years old then – his Marriage Certificate (GD8) showing that he married

Agnita the first named defendant also known as Philomene Actie on 22nd August 1961 at age 32. The claimants further state that Agnita would only have been aged 14 years old then (that is in 1945) and could not have given birth to a daughter fathered by someone else in 1951. Exhibit GD9 refers. Hence it would be untrue to say that George and Agnita Louison occupied the land in 1945 as they averred and the Court accordingly accepts the claimants's version that the first named defendant and George Louison (the deceased) built their structures between 1986 and 1989.

[67] It is further undisputed that the claimants purchased the land in 1995 and the first notices to quit were sent in 2006 eleven years later thus interrupting any period of prescription that may have accrued. Prescriptive title in any case requires more than an allegation. In cross-examination Brenda stated that during the Land Registration and Titling Project the land did not belong to George Louison but to his uncle and stated emphatically that her father George had claimed it for her uncle but there were no supporting documents produced to show that it belonged to either of them. If in fact the land belonged to either of them as she alleged why then would she be seeking prescriptive title against the claimants if it belonged to her uncle and father.

[68] The title to the claimants' Deed of Sale is stated to be a Designation and Vesting Deed executed on 31st March 1994 and registered on 6th May 1994 as Instrument No. 1607/94 (Exhibit GD1). It is evident that the claimants' predecessor in title had absolute title when he conveyed to them. Further both Linda Emilien and Paul Richillieu the defendants' witnesses admitted that the claimants' predecessor in title Evariste Gaspard sold parcels of land adjoining that of the claimants.

Compensation for Improvements

[69] The claimants emphatically stated that no cultivation was carried out on their land and only trees shrubs and bush the indigenous vegetation of the Gros Islet area flourished there. Exhibit GD2 – pictures depicting the two structures bear this out. The defendants have not adduced any evidence by way of photographs or

otherwise from which the value (by way of expert valuation) can reliably be deduced of any crops or cultivation on the land.

[70] As regards the two small structures both parties agreed that they were erected before the claimants purchased the land on which they are situated and which the claimants categorically stated were only used occasionally. Licences to slaughter animals in the name of Agnita Louison were produced. These numbered eleven and all were issued in the year 2000. No other licence was produced as proof of use of the slaughter stall and the shop since the shop would only have been used when slaughtering took place. Brenda Louison even declared in cross-examination that no slaughtering in fact took place after 2006 and appears to have steadily declined prior thereto following the death of George Louison the butcher. No evidence of expenditure on the two structures or of improvements or repairs or otherwise to them has been adduced. The impression quite frankly is that they remained essentially as they were when the claimants purchased the land in 1995 - that is to say two small structures close to the main public road as depicted by the photograph shown as Exhibit GD2.

[71] Consequently Article 374 of the **Civil Code** which relates to reimbursement where a party in possession is forced to give up the immovable upon which he has made improvements for which he is entitled to be reimbursed has a right to retain the property until such reimbursement is made; is wholly inapplicable in the circumstances. And so too Article 372 of the **Civil Code** would be equally inapplicable as no evidence has been adduced by the defendants of any improvements to the land or anything thereon with their own materials that were necessary.

Further the defendants were not possessors but occupiers and no estimate or value of the two small structures were given.

[72] In sum I find as a fact that:

- (1) The claimants have absolute, indefeasible title to Parcel No. 1251B 776 in the Registration Quarter of Gros Islet as per the Land Registration Act 1984.
- (2) The defendants have not shown that they have any title or interest in the said land.
- (3) The defendants have failed to show any title to the land, there are no errors in the registration of the claimants' title in the Land Register to rectify.
- (4) The defendants have not made any improvements to the claimants' land or produced any evidence of cultivation or otherwise. No evidence of the value of the two structures were submitted. The wooden hut can be removed.
- (5) The defendants have no "rights" to be protected as an overriding interest. They are bare licencees.
- (6) As being in actual occupation of the two structures the defendants would be entitled to nominal damages of \$500.00.

[73] Judgment is accordingly entered for the claimants against the defendants in the following terms, namely:

- (1) It is hereby ordered and directed that the defendants do quit and deliver up vacant possession of the claimants' land registered as Parcel 1251B 776 in the Registration Quarter of Gros Islet forthwith and remove the two structures thereon without further delay.
- (2) That the defendants do pay to the claimants damages for use and occupation of the premises at the monthly rate of \$100.00 from 30th June 2006 to 30th January 2009 in the sum of \$3,100.00.
- (3) That the defendants do pay to the claimants damages for use and occupation of the said premises from 31st January 2009 until delivery of possession at the monthly rate of \$100.00.

- (4) That the defendants do pay the claimants interest at a rate of 6% per annum from 31st January 2009 until date of payment.
- (5) Costs to be prescribed costs pursuant to Part 65.5 of the **Civil Procedure Rules 2000**.

Order accordingly.

Ephraim Georges
High Court Judge [Ag.]