THE EASTERN CARIBBEAN SUPREME COURT

ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO.s AXAHCV2010/0069; 2010/0070; 2010/0071; 2010/0072; 2010/0073; 2010/0076; 2010/0077; 2010/0078; 2010/0079; 2010/0081; 2011/0051; 2011/0052

IN THE MATTER of the Registered Land Act, Revised Statutes of Anguilla, Chapter R30, section 147

AND

IN THE MATTER of an Appeal by Collins Richardson, Carolyn Richardson (Administrator of the Estate of John Samuel Richardson); Boswell Richardson; Calvin Richardson; Leslie Richardson as Administrator of the Estate Alma Richardson; Margie Hughes as Administrator of the Estate of Evangeline Hughes; Estell Hughes as Administrator of the Estate of Samuel Benjamin Richardson; Calvin Richardson as Administrator of the Estate of Victor Richardson; Robert Austin Richardson as Administrator of the Estate of Eneria Richardson; Royston Richardson as Administrator of the Estate of James Richardson; Oliver MacDonna as Administrator of the Estate of Jane Rebecca Richardson and Sybil Ryhmer as the Administrator of the Estate of Florence Richardson against a decision of the Registrar of Lands dated 28th September 2010 and 7th July 2011.

(Consolidated /To be tried together by order of this Honourable Court on 18th day of May 2011, 26th October 2011 and 25th July 2012)

Appearances:

Mrs. Joyce Kentish-Egan with her Mr. Kerith Kentish for the Applicant.

Mr. Clyde Williams with Mr. Alex Richardson for the Respondents.

2013: July, 29th

October, 8th

JUDGMENT

[1] MATHURIN J.: The genesis of this matter has a history which should be summarized to lend some clarity to yet another aspect of litigation between the heirs of Abraham Richardson (Respondents) and the heirs of John Richards Richardson (Benjamin). The subject matter of this continuing dispute is a piece of land originally Block 18011B Parcel 1 (Parcel 1) located at Long Bay, Anguilla. Several proceedings have been instituted over the last 38 years concerning the ownership of the land in question. For ease of reference in this decision I have referred to the heirs of Abraham as "the Respondents" and the heirs of John as "Benjamin".

[2] The substantive claims are pursuant to a direction of the Court of Appeal for a rehearing of the Land Registrar's decision. That decision had been appealed by the Respondents and the High Court had upheld the decision on review. On appeal, the Court of Appeal determined that the matter should be reheard and it was *"remitted to the High Court for case management as a matter of urgency with a view to rehearing and determination of the evidence which is to be used for that rehearing"*. At case management and after a number of hearings, I requested the parties to file their points of claim and defence outlining the questions in issue with any evidence that they would need in addition to what was filed before the Registrar of Lands for the hearing. Directions were given and the hearing of the matter was set down.

[3] On 18th March 2013, Benjamin filed an application to strike out the Respondents' claims on the grounds of res judicata. Directions were given for the hearing of this application and it was set down for hearing. A week later, the Respondents filed an application to strike out Benjamin's application. On perusal, I concluded that the application of the Respondents to

strike out the substantive application of Benjamin was seemingly no more than an objection to his substantive application to strike out for res judicata. I also concluded that the proper way in which to respond to an application to strike out was by way of affidavit to the facts and submission as to the law. In any event, after a terse hearing and much protestation from Counsel for the Respondents, I gave further directions for the applications to be heard together with leave to the parties to file any additional evidence and submissions that they may need.

HISTORY

[4] In Wilson Richardson v Alfred Richardson Suit No. 21 of 1977, pursuant to an appeal against the decision of the Land Adjudication Officer vesting the legal title of Parcel 1 in heirs of Abraham, Joseph J. determined that the Long Bay Estate, with the exception of the areas of the Estate that were the subject of a Consent Order (the Consent Order) made on the 25th April 1983, vested in the personal representative of the estate of John Richards Richardson (Benjamin).

[5] The Consent Order was in the following terms;

"Upon hearing Counsel for both Parties and by consent it is ordered that the Registrar of Lands in respect of Block 18111B Parcel 1 under Section 135 of the Registered Land Ordinance 1974, receive applications for ownership of land with Absolute Title as per the list attached to the plan and filed on the 25th April in Suit 21 of 1977."

Attached to the Order was a list of 30 persons, all connected to these current proceedings by virtue of being a descendant of Abraham with one exception, that were to make the said applications to the Land Registrar and that list referred to an attached plan. The plan was not attached to either the pleadings or evidence of either party who both referred to the Consent Order but did not furnish the Court with it, which is contrary to proper disclosure and bad practice. The Registrar subsequently provided this addendum for the court's benefit from the case file of 21 of 1977 and provided copies to both parties at my direction.

[6] This decision of Joseph J. was appealed and the Court of Appeal, in Civil Appeal No. 3 of 1985, affirmed the judgment in every respect. It is to be noted that both parties have submitted that they have no dispute with the judgment but rather whereas Benjamin claims

that the claims are outside the scope of the Consent Order and judgment, the Respondents claim that Suit No. 21 of 1977 did not settle issues of prescriptive right only the issue of legal ownership.

[7] In Amos Richardson et al v Benjamin Richardson Suit No. 49 of 1990, a claim in which the Respondents claimed that Parcel 1 had been used and occupied by their ancestors for in excess of 150 years, Lloyd J. determined that the parties in those proceedings remained the same as in Suit No. 21 of 1977 as the rights obtained by them in the previous proceedings were so obtained on the basis that they were the beneficiaries as heirs of Abraham, and dismissed the claim as res judicata and an abuse of the process of the court.

[8] In Amos Richardson et al v Benjamin Richardson Civil Appeal No. 4 of 1992, Sir Vincent Floissac, C.J. stated that "*The judgment in Suit No. 21 of 1977 and the judgment of this Court in appeal No. 3 of 1985 finally and conclusively determined on its merits the issue of ownership of the disputed land. There are no special circumstances which entitle the appellants to re-litigate that adjudicated issue in the interests of justice. The appellants are therefore stopped per rem judicatum from re-litigating that issue. Suit No. 49 of 1990 was an attempt to do so. As such, it was an abuse of the process of the Court.*"

[9] This judgment of Sir Vincent Floissac C.J. was appealed to the Judicial Committee of the Privy Council and was dismissed.

[10] In Fixed Date claim, Oliver Mac Donna v Benjamin Richardson AXAHCV0021/2003, Mr. Mac Donna sought an Order that Margaret Richardson was the rightful owner of Parcel 1 amongst other relief. Edwards J. struck out that claim as an abuse of the process of the Court and found "*that the circumstances presented in this case give rise to cause of action estoppels. Since the present parties in these proceedings are privies to the parties in the previous proceedings, and it is the same subject matter involved, namely the Long Bay Estate which was the subject of the 1890 Deed, the bar is absolute in the absence of allegations of fraud or collusion… I therefore conclude that the decision in the previous*

proceedings concerning Long Bay Estate is binding on the parties in the present action. The claim is struck out for being an abuse of the process of the Court."

[11] An appeal against that decision was struck out as a nullity by Barrow J.A. in Civil Appeal No. 3 of 2005 for failure to obtain the mandatory leave required to appeal.

[12] The ground for Benjamin's application to strike out is that the claims are vexatious and an abuse of the process of the court. He grounds the court's jurisdiction to strike out as pursuant to CPR2000 Part 26.3 which allows the court allows the court to strike out the statement of case or part of a statement of case.

[13] Benjamin relies on the basis of res judicata. He states that the issue of the ownership of the land has been determined conclusively in the several pieces of litigation that the Respondents have raised in several unsuccessful attempts to undermine the effect of the judgment of Joseph J in Suit No. 21 of 1997 and the Consent Order consequentially. Counsel states that it is clear that these claims to land, in excess of the boundaries of the lots occupied by the Respondents, were outside of the contemplation of the Consent Order and therefore fell within the ownership of Benjamin as decided by that case and upheld in several subsequent court hearings.

"By a Consent Order made on 25 April, 1983, it was ordered that the descendants of Abraham Richardson's children could claim and be registered as owners of the land that they occupy. I …order that the eastern portion of Long Bay Estate, with the exception of the areas of the Estate that were the subject of a Consent Order made on the 25th April 1983 vest in the personal representatives of the estate of John Richards Richardson."

The terms of the Consent Order have been repeated above at paragraph 5.

[14] Counsel refers to the principles of res judicata set out in Halsbury's Laws of England 5th Edition, Volume 12 at Para 1166 which states that;

"The law discourages re-litigation of the same issues except by means of an appeal. It is not in the interests of justice that there should be a re-trial of a case which has already been decided by another court, leading to the possibility of conflicting judicial decisions, or

that there should be collateral challenges to judicial decisions; but there is a danger, not only of unfairness to the parties concerned, but also of bringing the administration of justice into disrepute. The principles of res judicata, issue estoppels and abuse of process have been used to address this problem."

[15] The doctrine of res judicata is based on three maxims: no man should be punished twice for the same cause; it is in the interest of the state that there should be an end to litigation; and a judicial decision must be accepted as correct.

[16] On the principle of res judicata and abuse of the process Lord Bingham in Johnson v Gore Wood &Co (2001) 1 AER 481 at 498 had this to say;

"…The underlying public interest is the same; that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely by a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party".

THE RESPONDENTS' CLAIMS

[17] The Respondents filed applications for prescriptive title for various lots in addition to those on which their houses were built totaling approximately 110 of 135 acres of Parcel 1. They claim that they are the descendants of Abraham Richardson and have possessed their respective lots in peaceful, undisturbed and uninterrupted possession and without the permission of Benjamin prior to the Consent Order and came into this possession through

their parents, grandparents and great grandparents who were all in peaceful, open, undisturbed and uninterrupted possession up to the time of the 1983 Consent Order.

[18] The Respondents have applied for Benjamin's application to strike out on the basis of res judicata, be struck out and or dismissed and for a wasted costs order against Benjamin's legal practitioners with costs and other relief as the court sees fit. Essentially the question for the court to determine is whether a matter that was originally heard by the Registrar of Lands and which was referred back to the High Court by the Court of Appeal for rehearing with a determination of the evidence to be considered, can be the subject matter of a strike out application on the grounds of res judicata.

[19] The grounds of the Respondents' application are that it is an abuse of the process of the court and likely to obstruct the just and timely disposal of the appeals, that the Respondents have a statutory and Constitutional right to appeal, that Benjamin's application is contemptuous and disregards the directions of the Court of Appeal on the procedure to be employed, that the conduct of Benjamin in these proceedings amounts to a waiver and that the Respondents have a real prospect of success on their appeals.

STATUTORY RIGHT OF APPEAL

[20] The hearing of an appeal under Part 60 of the Rules requires the filing of a Fixed Date Claim and allows the admission of further evidence. The procedure for hearing the claim is outlined in Part 60 referring to Part 27.2 which states that the Court has all the powers of a case management conference. The case management powers exercised by the court allows it to take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective. Additionally Part 26.3 gives the court the power to strike out the statement of case or part of it if it appears that there is an abuse of the process of the court.

[21] The Respondents state that the statutory right of appeal is not subject to permission or the threshold test of real prospect of success. They state that the appeal is a matter of right and that the court is precluded from taking a preliminary look at the merits of the appeal.

In support of this they cite the words of Pereira CJ in Civil Appeal No. 1 of 2012 *"that it is intended that the court not only look at what the Registrar had before the…well what was before the Registrar but also involves the additional power to really conduct a rehearing of the matter in all that it entails in terms of coming to a decision."*

[22] The assertion by the Respondents is that the High Court, sitting in its appellate jurisdiction has no authority in law to consider and rule on a strike out application as the Respondents have an unrestricted right of appeal under law. They state that the fact that the matters are to be reheard by the High Court does not change their character; they still remain appeals and are not matters filed under the original jurisdiction of the High Court.

[23] Counsel for Benjamin responds that character has changed as the ruling of Pereira CJ was to rehear the appeals de novo as a court of original jurisdiction. They say that that, coupled with the direction from Pereira CJ that the court *"conduct a rehearing of the matter in all that it entails in terms of coming to a decision on the merits of the matter"* and the case management directive only adds to the court's jurisdiction to entertain the strike out application.

[24] My view is that this court can hear an application to strike out any matter which attempts to re-litigate issues between different parties as an abuse of the process of the court. The power should be used in cases in which justice and public policy demand it. Lord Diplock in Hunter v. Chief Constable of the West Midlands Police (1982) AC 529 stated at p. 536, that

"the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; …It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

[25] I agree with the principles upon which Lord Diplock said that the power should be exercised: in cases in which re-litigation of an issue previously decided would be "manifestly unfair" to a party or would bring the administration of justice into disrepute. Lord Diplock said later in his speech, at p. 541, that the abuse of process exemplified by the facts of that case were:

"the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

[26] I find that there is no statutory barrier that prevents this court from hearing a strike out application in these circumstances.

CONSTITUTIONAL RIGHTS

[27] The Respondents submit that hearing the strike out application would have the effect of denying them their statutory right of appeal. They submit that the exercise of this statutory right is the first step in exercising their constitutional right to appeal all the way to the Privy Council. They rely on s.72 which states;

"*In the following cases, an appeal shall lie from the decisions of the High Court, to the Court of Appeal and thence to her Majesty in Council as of right…*

(b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of EC$2,500.00 or upwards or where the matter involves, directly or indirectly a claim to or a question respecting property…

The Respondents state that it would thwart their constitutional rights if the matter is struck out on the first tier of appeal. They have provided no authority however to show how determination of this application would fetter this right.

[28] The Respondents also rely on s. 9(2) which states that;

"*Any court or authority prescribed in law for the determination of the existence or extent of civil rights or obligations shall be established by law and shall be independent and impartial; and where proceedings for such determination are instituted by any person*

before such a court or authority, the case shall be given a fair hearing within a reasonable time."

They state that the strike out application is an assault on their constitutional rights to a fair hearing and rely on the case of Colley v Council for Licensed Conveyancers (2001) EWCA Civ 1137 wherein it was stated

"*The right of access to a court is of fundamental constitutional importance. It is scarcely necessary to refer to authority for that obvious proposition. Lord Bingham of Cornhill stated in R (On the application of Daly v Secretary of State for the Home Department… [2001] 2 WLR at 1625G of the latter report that important rights including the right of access to a court, calling for appropriate legal protection, may be curtailed only by clear and express words, and then only to the extent reasonably necessary to meet the ends which justify the curtailment. For present purposes, it seems to us that access to a court means that those who need the assistance of the court to assert their legal rights and obtain remedies to which they are in law entitled are able to start proceedings in an appropriate court to that end. Having started the proceedings, they are entitled to have the court determine them according to law*"

[29] With respect, I do not find this proposition incompatible with the matter before me because whether or not a matter is res judicata is a question of law which binds the court. In my view, it would be a fettering of this court's jurisdiction if it could not consider whether or not a substantial amount of the land being claimed by the Respondents attracts the principles of res judicata thus rendering the claims a collateral attack on the judgment of Joseph J. and the related Consent Order and attachments. In any event, it seems to me that a determination of this point is one on the merits. Not only does the court have to protect its process from abuse, but in keeping with the overriding objective of the CPR2000, designed to save parties time and expense, it is necessary to consider also whether the allocation of the court's resources would be well spent in reconsidering a matter which has spanned 30 years through at least 7 instances of litigation which have determined those issues conclusively. It will be a reasonable use of the court's time to extract unnecessary pleadings and issues which have already been determined, and allow for a focused determination of issues that are capable of determination (if any.)

[30] I find that the assertion that the Respondents' constitutional rights to a hearing will be compromised misconceived. In any event, the Respondents have not shown and neither am I aware of any authority to suggest that the right to appeal the decision of this court up to the Privy Council, if parties wish to so do, will be barred by the consideration of this application.

BEHAVIOUR AMOUNTING TO WAIVER

[31] The Respondents also assert that the conduct during these proceedings that is the case management directions, filing of points of claim and defence, witness statements, legal submissions and trial bundles amounts to a waiver. They state that Benjamin through his conduct has caused them and the court to allocate significant resources to these appeals and should not be allowed at this 11th hour to mount a wholly misconceived, unreasonable and contemptuous application to strike out the claims.

[32] Benjamin denies this. Neither party has put any authority before me with reference to this point. CPR2000 Part 11 which governs applications states;

(1) *"So far as practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.*
(2) *If an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances."*

[33] CPR2000 does not provide the sanction of not considering an application made at this stage but rather requires the issue to be considered as an issue of costs unless special circumstances exist.

REAL PROSPECT OF SUCCESS ON APPEALS

[34] The Respondents state that they do not think it necessary to argue this point. However they state that in essence if there is no rehearing, they would be deprived of their right to

appeal under the Registered Land Act. They state that notwithstanding, they rely on their grounds of appeal and evidence filed herein as the basis of having a real prospect of success. It would have been immeasurably helpful, as it is a ground that the Respondents are pleading, if it were developed further to show that they had a real prospect of success. It is improper to plead this ground and ask that the court look at the claim and pleadings to find it. However, suffice it to say that in my view, a real prospect of success on long possession claims on the basis of use by ancestors, which are refuted on the basis that those claims had already been conclusively determined by a court of law, does not exude real prospect of success without more.

WASTED COSTS

[35] The Respondents state that the conduct of the legal practitioners for Benjamin in filing this strike out application at the 11th hour is unreasonable and or negligent in all the circumstances which are those referred to in the grounds above and rely on the decision in Ridehalgh v Horsefield and another; and other appeals (1994) 3 AER 848,CA. They state that the conduct is vexatious and abusive and designed to harass the Respondents and to cause them to incur unnecessary costs rather than to advance the resolution of the appeals.

[36] Counsel for Benjamin, in response claims a full trial will re-litigate what has been conclusively decided by competent courts of jurisdiction and the highest of judicial authority. They consider that the application is a fast track of Benjamin's defence so as to bring about a timely and just disposal of the proceedings.

[37] In conclusion I find that the application to strike out on the basis of res judicata which is a principle of law as in these circumstances, should not attract a wasted costs order and as such, I order that the Respondent's applications be dismissed in its entirety.

RES JUDICATA / ABUSE OF PROCESS

[38] I have considered the claims, the submissions and the witness statements and statutory declarations of all parties as well as all the previous judgments referring to this parcel of

land and it is clear to me that the issue of possession and ownership of Parcel 1 has been finally decided. In my view, any claims that exceed the ambit of the Consent Order and the judgment of Joseph J. are a collateral attack on the validity of those proceedings. Any claims for long possession of Long Bay Estate should have been and were in my view, dealt with during the Land Adjudication process. Any claim on the basis of uninterrupted and peaceful possession of Parcel 1 should have been raised at that time. That the Respondents armed with the Consent Order and its attachments, the judgment of Joseph J and several others could go before the Registrar of Lands and now this court and still claim long possession based on the activities of their predecessors is clearly an attempt to have the several judgments of this court fall into disrepute and to again re-litigate the ownership of what is almost the entirety of Parcel 1.

[39] This court has no jurisdiction to determine any claims outside of those detailed in the Consent Order, the attached list of Owners of Houses numbered and the map that was attached to that list and any claim for possession of land on the basis of long possession before the 1983 judgment go contrary to the judgment of Joseph J. and are an abuse of the process of the court and comprise in my view, unjust harassment of Benjamin who has had to counter attacks on a judgment obtained in excess of 30 years ago, the effect of which has been upheld in litigation as far as the Privy Council.

[40] It is noteworthy that some of the Parties to the Consent Order have acquired ownership of their property with fixed boundaries. The sizes of the lots vary from 0.23 acres to 1.03 acres which, in my view, are consistent with the Consent Order in determining the ownership of the land that they occupied. It is difficult to see how the boundaries could be extended to encompass large tracts of land under the guise of long possession by ancestors when the issue was settled in 21/1977.

[41] I am fortified in this belief on a reading of Joseph J.'s judgment wherein she referred to the evidence of Wilson Richardson who testified that the eastern portion of the land was owned by Abraham Richardson and that "*some of my grandfather's brothers and sisters have occupied parts of the land that I claim from my grandfather Richardson's estate, and*

we have agreed that the areas occupied by them can be claimed through long possession… I agree that most of the houses are built on piece of land I am claiming from my grandfather"

[42] In Suit No. 49 of 1990 Amos Richardson et al v Benjamin Richardson, a claim in which the Respondents claimed that Parcel 1 had been used and occupied by their ancestors for in excess of 150 years, Lloyd J. determined that the parties in those proceedings remained the same as in Suit No. 21 of 1977 as the rights obtained by them in the previous proceedings were so obtained on the basis that they were the beneficiaries as heirs of Abraham, and dismissed the claim as res judicata and an abuse of the process of the court.

[43] Mr. Hubert Hughes was the representative of the Respondents in Suit No. 21/1977. In Suit No. 49/1990 Mr. Hughes swore an affidavit on the 29th November 1991 stating "*That I am informed and verily believe that the consent Order referred to by Justice Joseph and by the Defendant in paragraph 14 of his affidavit relates to the consent of the Plaintiff in suit no.21 of 1977, that he agreed that no matter what the outcome of the case, that persons would be entitled to the areas of land on which their homes were built."*

[44] During the Land Adjudication process, it is to be noted that all the Parties to the Consent Order put forward a claim for the entirety of the disputed land on the basis that it was owned by Abraham. The decision of Joseph J. and all subsequent litigation determined that the ownership was vested in Benjamin. I am therefore of the view that the Consent Order referred to long possession claims for only the lots on which the Respondents built their houses.

THE CURRENT CLAIMS

[45] There are 12 claims which are summarized as follows and with the exception of Samuel Benjamin Richardson which is brought by Estelle Hughes, all parties are descendants of

Abraham. They are either party to or an heir or successor to the Consent Order referred to in paragraph 5 above;

(a) AXAHCV2010/0069 - Collins Richardson claims 6 lots namely 8A to 8E totaling 14.06 acres. His house lot is registered as Parcel 8 in the Land Registry. He claims the other lots stating that his father and grandfather cultivated the land. He claims that he has cultivated Lot 8C even before Benjamin was born and his possession has been uninterrupted until 2005.

Benjamin disputes everything claimed except the house lot and an undetermined amount of land around the house. He claims every other claim is res judicata because the ownership of Parcel 1 was determined in 1983 on appeal from the Land Adjudication decision. Any claim for possession would therefore have to be from 1983 as legal proceedings clearly amount to interruption of prescription in accordance with the Registered Land Act s142(6) which states that "*possession shall be interrupted…by the institution of legal proceedings by the proprietor of the land to assert his right thereto.*"

The several decisions of the court over the years clearly show that there has been no period from that time which would constitute uninterrupted possession. In my view therefore this claim is limited to fixing a boundary around the immediate confines of the house Lot 8 as per the Consent Order and no further, and as such the claims for long possession of Lots 8A to 8E are struck out as res judicata.

(b) AXAHCV2010/0070 - Carolyn Richardson (personal representative of John Samuel Richardson) claims 3 lots namely 7A, 7B and an additional strip in Forrest Bottom. The claims are based on the basis that John Samuel Richardson occupied and cultivated these lots as did his father before him. His house lot is registered as Parcel 7.

I find that this claim is limited to fixing a boundary around the immediate confines of the house lot Parcel 7 in accordance with the Consent Order and no further. The claims for long possession of Lots 7A, 7B and the strip in Forrest Bottom are struck out as res judicata.

(c) AXAHCV2010/0071 - Boswell Richardson who is the great grandson of Abraham Richardson claims 1.80 acres made up of Lots 5, 43 and 44. He says he cultivated the lots and his family took care of the property when he lived in the Virgin Islands. He states he was in uninterrupted, open and peaceful possession without the permission of the person lawfully entitled to it. I find that his claim is limited to fixing a boundary around the immediate confines of Parcel 5 as per the Consent Order and no more. The claims for Lots 43 and 44 are struck out as res judicata.

(d) AXAHCV2010/0072 - Calvin Richardson claims 3 lots approximating 3 acres. These are 6A, 6C and Various 1. He states that his father and grandfather cultivated and possessed these areas from as early as he can recall. I find that his claim for 6A for 0.50 acres is in accordance with the Consent Order and that the Claims for Lot 6C and Various 1 are struck out as res judicata.

(e) AXAHCV2010/0073 - Leslie Richardson (Administrator of the Estate of Alma Richardson) claims 2 lots, 1A and 1B measuring 4.51 acres. He states that he is the son of Alma who cultivated crops on the land right up to the 1980's. Alma's house was located on Parcel 8. No claim was made by Alma during the Land Adjudication process and she was one of the Parties to the Consent Order. I find that the claim for Lots 1A and 1B on the basis of long possession before 21/77 and the Consent Order has already been determined conclusively and as such, these claims are struck out as res judicata.

(f) AXAHCV2010/0076 - Margie Hughes (Administratrix of the Estate of Evangeline Hughes) claims 2 lots of land namely 10A and 10B totaling 2.70 acres. Benjamin submits she is only entitled to the .50 acre of Lot 10B on which her house is built and this apparently is not disputed. She claims Evangaline used the land for cultivation, grazing and picking rocks for in excess of 12 years since 1969. I find that the Claim for Lot 10B is in accordance with the Consent Order and strike out the claim for Lot 10A is struck out as res judicata.

(g) AXAHCV2010/0077 - Estell Hughes (Administratrix of the Estate of Samuel Benjamin Richardson) claims 1.04 acres within lots 218 and 219 within Parcel 1. Samuel Benjamin was not a heir in the estate of Benjamin and never made a claim during the Land Adjudication Process. Samuel was not a party to the Consent Order. The claim is that he cultivated those lands which were used for mauby bark and for making brooms apart from cultivation and rearing of animals on the other parts and did this for in excess of 60 years prior to his death in 1974. Any claim therefore for possession of land on this basis ought to have been made during the Land Adjudication process and this not having been done, his estate cannot now do so, ownership having been conclusively settled in 21/1977. This claim is struck out.

(h) AXAHCV2010/0078 - Calvin Richardson (Administrator of the Estate of Victor Richardson) claims 2.38 acres affecting Parcels 39 and 40. Victor is the Registered Proprietor of Parcel 20 measuring .50 acres. This is in accordance with the Consent Order. Calvin claims Victor cultivated crops and reared animals on the land which was passed to him by his father Robert who got it from his father Abraham. Parcels 39 and 40 have been conclusively settled by the 21/1977 and any claim for possession on the basis herein is struck out as res judicata.

(i) AXAHCV2010/0079 - Robert Austin Richardson (Administrator of the Estate of Eneria Richardson) claims 3 parcels of land totaling 11.93 acres consisting of Lot 12, 12A and the Strip. Eneria is the registered Proprietor of Parcel 12 and the other pieces are claimed through long possession. He claims that Eneria and her husband used the land for cultivation and grazing of animals and possessed it openly, uninterrupted and peacefully until 1983 at the time of the Consent Order. Eneria was party to the Consent Order which permitted her to apply for the lot she occupied and this is the lot that she is registered as owner of. The claims for Lot 12A and the Strip are struck out as res judicata.

(j) AXAHCV2010/0081 - Royston Richardson (Administrator of the Estate of James Richardson) claims Lot 9A consisting of 2.96 acres. James was the Registered Proprietor of Parcel 9 on which his house was built. Royston claims that James cultivated 9A up to his death in 2005 and also used it for grazing animals, making brooms and kilns. The claim for Lot 9A is outside the scope of the Consent Order and is struck out as res judicata.

(k) AXAHCV2010/0051 - Oliver Mac Donna (Administrator of the Estate of Jane Rebecca Richardson) claims 4 lots of land 21A, 21B, 22A and 22B measuring 22.48 acres. Benjamin states she was entitled to Lot 22 and she was the Registered Proprietor of same. The other land is claimed through long possession on the basis that Jane Rebecca cultivated the land and reared animals on the land and it was also used to source wood for coals which were sold in St Maarten. She also sold brooms with material from the land. Jane Rebecca was a party to the Consent Order and all other claims outside of Parcel 22 are struck out as res judicata.

(l) AXAHCV2010/0052 - Sybil Rhymer (Administrator of the Estate of Florence Richardson) claims Lots 14A and 14B measuring 13.82 acres. She is the Registered Proprietor of Parcel 22. She states that Florence used the lands for sourcing thatch and sticks to make brooms and also cultivation and animal rearing. Sybil states that Florence and her husband occupied the claimed parcels of land openly, peacefully and uninterrupted until sometime from the 1980's when she states Benjamin stated creating disputes about the land. Sybil did not claim Lots 14A and 14B during the Land Adjudication process and was party to the Consent Order. The claim to these two lots of land is therefore struck out as res judicata.

[46] In summary, all claims to lots of land based on long possession which were outside of the curtilage of the house lots numbered in the Consent Order and addendum, are struck out on the basis of res judicata and the Respondents are estopped from bringing these claims for determination before the court as they have been conclusively determined. I find that any attempt to do so represents a collateral attack on the very clear judgment of Joseph J.

and all subsequent litigation concerning Parcel 1. I find that it is an abuse of the process of the court to continuously raise claims to this land effectively ignoring the judgment of the court.

[47] The effect of the preceding judgments concerning Parcel 1 therefore limits the jurisdiction of this court to the fixing of boundaries of the house lots referred in accordance with the Consent Order and such house lots are to be surveyed for that purpose.

COSTS

[48] The issue of costs of this application was not dealt with at the hearing so costs are to be assessed if not agreed.

[49] In summary, the Order of the court is as follows;

(a) That the Application of the Respondents is dismissed.
(b) That the Claim AXAHCV2010/0077 is dismissed.
(c) That Claims for long possession within Parcel 1 are limited to the lots upon which the heirs of Abraham Richardson as listed in the Consent Order of 25th April 1983, had houses.
(d) That the boundaries of the house lots are to be limited to the curtilage of those house lots and are to be accordingly surveyed as soon as possible within the next six months.
(e) That the Parts of the Claim referring to any lands outside those addressed in the Consent Order with list of Owners attached are struck out as res judicata and are an abuse of the process of the court.
(f) That only evidence in relation to the boundaries of the house plots identified and recognized in the Consent Order is necessary to settle any outstanding dispute in relation to entitlement and accordingly all evidence referred to in witness statements, affidavits and statutory declarations outside of this limitation is struck out.
(g) That costs be assessed if not agreed.

(h) That the matter be remitted to the Registrar of Lands for the determination of the boundaries.

Cheryl Mathurin
High Court Judge