THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP 2011/0025

BETWEEN:

[1] MOSES JOSEPH
[2] ST. TORRENCE MATTY
[3] MATTHEW MATTY
[4] PATRICK LUBIN
[5] EARL BERNARD
[6] ANTOINE FANIS
(Representatives of the Estate of Louis Seraphin)

Appellants

and

ALICIA FRANCOIS
(Administratrix of the Estate of Jacob Fanus deceased)

Respondent

SLUHCVAP 2012/0037

BETWEEN:

[1] ST. TORRENCE MATTY
[2] MATTHEW MATTY
[3] PETER FANUS
[4] RAYMOND FANIS

Appellants

and

ALICIA FRANCOIS
(Administratrix of the Estate of Jacob Fanus deceased)

Respondent

Before:

Hon. Dame. Janice M. Pereira, DBE	Chief Justice
Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
Hon. Mr. Mario Michel	Justice of Appeal

Appearances:

Mr. Horace Fraser, for the Appellants
Mr. Vern Gill, for the Respondent

2015: April 15;
Reasons for Decision
Delivered 21st August 2015

Civil Appeal – Prescription of action by thirty years– Mistake in registration of land– Delayed Judgment

The first claim (giving rise to appeal No. 25 of 2011 was commenced by Jacob Fanus on 10th August 2004. The respondent Ms Alicia Francois is now the administratrix of the estate of Jacob Fanus. Mr Jacob Fanus sought recovery of possession of land from the appellants who he alleged were tenants at sufferance. The appellants originally pleaded that the notice was invalid but following the death of Jacob Fanus challenged his ownership of the disputed land.

The appellants contended that the respondent's claim was prescribed by 30 years and that the respondent was accordingly barred from bringing the claim for possession of the land pursuant to Article 2103A of the Civil Code of Saint Lucia. They counter claimed and sought a declaration that they were entitled to the disputed land by virtue of prescription pursuant to the said Article 2103A of the Civil Code. Judgment was granted in favour of the respondent. The Court declared that:

(a) The appellants quit and deliver up the disputed land to the Respondent on or before the 31st December 2011.
(b) The appellants jointly and severally pay mesne profits in the sum of $1,400.00 to the Respondent by 31st December 2011.
(c) The appellants pay damages for trespass jointly and severally to the claimant in the sum of $1,800.00
(d) The appellants do jointly and severally pay the Respondents costs of $1,000.00.

The appellants appealed.

The second claim which gives rise to appeal No. 37 of 2012 was commenced by the appellants. They claimed declarations that the estate of Jacob Fanus was not legally entitled to the disputed land and that he had obtained title by fraud or mistake. The appellants also sought rectification of the land register pursuant to section 98 of the Land Registration Act. Judgment was granted in favour of the respondent:

(a) dismissing the appellants claim; and

(b) awarding costs to the respondent.

The appellants appealed.

Held: dismissing the appeals and awarding costs to the respondent that:

1. The function of the trial Judge is not to find or formulate issues for a party which has not been pleaded or decide an issue which has not yet been raised.

2. The section 28(g) **Land Registration Act** issue was not an issue in the court below and it would be unfair to allow such an issue now which would render the entire case a wholly different case to the case tried below.

   George Knowles v Elaine Knowles, ANUHCVAP2005/0017 (delivered 18th September 2006, unreported) applied;

3. The same elements required for establishing positive prescription apply equally to setting up negative prescription as a bar. Evidence must be led which satisfies Article 2051 of the **Civil Code** of Saint Lucia in order to successfully defeat a claim made by a person as an owner.
   Article 2057 of the Civil Code of Saint Lucia followed;

4. On the matter of delay, it is to be noted that delay in and of itself does not automatically render a judgment or finding unsound. To warrant interference by an appellate court it must be shown that the delay resulted in the judge making significant consequential error in his reasoning and thus to the conclusions reached. While it is accepted that there was delay

in delivery of the judgment no error in the judge's reasoning could be discerned which is attributable to the delay in the delivery of the judgment. Overall, the learned judge's reasoning and conclusion could not be faulted.

Monica Jane Ramnarine v Chandra Bose Ramnarine [2013] UKPC 27 followed; **Cobham v Frett** [2001] 1 WLR 1775 applied;

5. Rectification of the register is available only if the mistake in question (or when fraud is in question, the fraud) occurred in the process of registration. Rectification under the **Land Registration Act** is not an alternative remedy for a claimant who simply failed to avail himself of the process for making a claim under the **Land Adjudication Act**, or availing himself in any respect of the avenues for review or appeal provided there under.

Skelton v Skelton [1986] 37 W.I.R. 177 followed; **Webster v Fleming** Anguilla Civil Appeal No. 6 of. 1993 followed; **Louisien v Jacob** [2007] UKPC 93 applied

JUDGMENT

PEREIRA, CJ: On 15th April we heard these two appeals which had been earlier consolidated with the consent of the parties. On the conclusion of the hearing the court was satisfied that both appeals were without merit and dismissed the appeals with costs in the appeals to the respondent agreed in the sum of $3,000.00 with written reasons to follow. We now do so.

The background

[2] Both claims in the court below are in respect of a parcel of land situate at Riche Bois and recorded on the Land Register as Registration Quarter Micoud, Parcel No.1627B 391 comprising approximately 5.34 hectares and first registered in the name of Jacob Fanus on 11.03. 87, pursuant to the Adjudication Record. In this

judgment the land shall be referred to as "the Disputed Land." Jacob Fanus[1] was first recorded on the land register with provisional title on 12th August 1987. His provisional title was made absolute on 10th May 2005.

[3] The first claim (giving rise to appeal No. 25 of 2011) was commenced by Jacob Fanus on 10th August, 2004 as owner of the Disputed Land. By amended claim filed on 17th November, 2004 he sought possession of the Disputed Land, damages, and mesne profits in respect of the appellants' use and occupation who had been given notice to quit by 31st May, 1997 and who had refused to do so. He averred that the appellants were tenants at sufferance. The appellants in their initial Defence pleaded only that Jacob Fanus was deceased[2] and that the Notice to Quit was invalid. The appellants however, in their amended Defence following the death of Jacob Fanus, challenged his ownership of the Disputed Land and denied being tenants at sufferance as they contended that the Notice to Quit was defective. Further and importantly for the purposes of this appeal, the appellants by way of Defence expressed their intention to rely on Article 2103A of the Civil Code *'namely that the Claimant by way of well over 30 years prescription is barred from bringing this claim for possession of land".*[3] They then sought by counterclaim a declaration that they were entitled to the Disputed Land by virtue of prescription pursuant to the said Article 2103A of the Civil Code.[4] On this basis the claim (hereinafter called "the Prescription Claim") proceeded to trial before Georges J. He delivered judgment on August 15th 2011.[5]

[4] The other claim (which gives rise to Appeal 37 of 2012) was commenced on 1st December, 2009 by the appellants. They claimed therein declarations to the effect that the Estate of Jacob Fanus was not legally entitled to the Disputed Land and that he had obtained title thereto by fraud and or mistake. They accordingly sought

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[1] Represented by his daughter Alicia Francois as Adminsitratrix of his Estate.
[2] Jacob Fanus died on 18th December, 2004 and the respondent, his daughter Alicia Francois was appointed Administratrix of his Estate on 12th April, 2005.
[3] See. Para. 6 of Amended Defence pg. 16 ROA Bundle B.
[4] The Appellant's counsel conceded at the hearing of the appeal that this declaration could not properly be granted by the Court as this would have been on the basis of a claim for positive prescription as distinct from reliance on negative prescription by way of defence.
[5] The trial got underway on 10th June 2010.

rectification of the land register pursuant to section 98 of the **Land Registration Act** ("LRA")[6]. On the hearing of this appeal the appellant made plain that no challenge is being made in respect of the trial judge's rejection of fraud. So far as is relevant to this appeal in relation to the issue of mistake the appellants averred in their affidavit[7] in support of their claim that:

(a) They were *"the heirs of the late Louis Seraphin* and were all physically present on the Disputed Land during the Land Registration Titling Project;

(b) *"apparently no claim was made by any of the legitimate heirs of the estate of the late Louis Seraphin".*

(c) Jacob Fanus was awarded the Disputed Land by mistake both in the adjudication process and the registration process in that, among other things:

(i) *"the demarcation process ought to have revealed the existence of the occupants on the land"*

(ii) *"The Deeds showing the estate of the late Louis Seraphin were at all material times registered and accessible to the adjudication and registration officers and their act of awarding the land to the late Jacob Fanus on the ground of long possession was done in wanton neglect of their duties."*

[5] The respondent's affidavit[8] in defence of the claim stated that:

(a) She was not aware of any claim by the appellants during the land registration process;

(b) Pierre Louis[9] had placed a caution on the land in 1999 claiming title thereto on behalf of the heirs of Louis Seraphin and Louis

[6] Cap. 5.01 Revised Laws of Saint Lucia, 2008.
[7] See ROA Bundle B pgs.4-9.
[8] See: ROA pgs. 10- 12.
[9] Said to be the sole heir of Fanus Louis who is said to be the late son of Louis Seraphin – see paras. 7 and 8 of affidavit of Appellants - ROA Bundle B pg 5.

Fanus Louis, but nothing further was done and the cautions were removed in 2001 at the instance of Jacob Fanus;

(c) only in 2003, after the elapse of some twelve years (the time provided for objections to Jacob Fanus' provisional title) was Jacob Fanus' title made absolute.

(d) her father (Jacob Fanus) had sought over the past 15 years to curtail the activities of the appellants but this was met with threats and abuse, and that she also is afraid of farming on the land due to the appellants' threats of physical harm;

(e) the appellants made no claim to the Disputed Land, nor did they make objection in respect of the land for well over twenty years until these proceedings.

[6] The appellants responded by affidavit[10] and therein stated that the heirs of Louis Seraphin did make a claim at the Land Registration Titling Project by claim No. 3H602 but that the said claim *"was not granted for reasons not known to us nor was there an adjudication between the competing claims' and* this *"is a mistake on the part of the authorities at the Land Registration Titling Project."*

[7] This claim (hereinafter called the "Rectification Claim") came on for hearing before Belle J. on 25th May 2011 and judgment delivered on 11th October, 2012[11].

The judgments below

[8] Georges J (Ag.) in the Prescription Claim gave judgment for the respondent and ordered, among other things, that the appellants deliver up possession of the Disputed Land by 31st December, 2011. He essentially found that even though some of the appellants claimed to have been on the Disputed Land before Jacob Fanus their possession was interrupted when Jacob Fanus got registered title in

[10] See ROA Bundle B pg. 14.
[11] It had earlier been directed that both claims would be heard by the same judge. This turned out not to be possible.

1987 and that the result of this interruption is that the relevant period of user that the court must consider would be from 1987 to present '*which falls short of the 30 years required by law.'*[12] He was also not convinced that the appellants' occupation of the Disputed Land was peaceable – a prerequisite for prescription [para.16]. He found further, that Jacob Fanus had been serving the appellants' with notices to quit beginning from 1st October 1987 and that the notices which he found to be valid operated as the respondent's protest to the appellants' use of the Disputed Land [paras. 16 and 17].

[9] Georges J [para.18], further opined as follows:

> 'The court now has authority to declare title by prescription which was once exercised by the Adjudication Officer under the LAA.[13] Jacob Fanus applied for title on the basis of having occupied the land for numerous years back in 1986. Any challenge to that cannot be brought before this court as there was a judicial process available to the Defendants [Appellants] through the LAA to challenge his claim to title. The matter for all intents and purposes is now res juidicata"

[10] Belle J, in the Rectification claim, dismissed the appellants' claim. He found that the appellants were not being truthful about their occupation of the Disputed Land[14] At paragraph 34 he opined as follows:

> " … The mistake according to the Claimants [Appellants] is that the Defendant's father [Respondent] was given all of the land rather than the part which he occupied. Clearly this was not a mistake. This was a deliberate decision on the part of the Adjudicator who must have concluded that there was no other person entitled to be on the land. He did not have to determine that there was no other person on the land"

[11] At paragraph 36, after opining as to the purpose and scheme of the **Land Adjudication Act** ("LAA"), Belle J cited a passage from the Privy Council decision in **Louisen v Jacob**[15] in which at para. 40 the Board stated as follows:

> "It is clear that rectification of the register under section 98 of the LRA can sometimes be ordered in respect of a first registration…. But it is also clear from the authorities that **rectification is not intended to be an**

[12] Judgment para. 15.
[13] Meaning The Land Adjudication Act Cap.5.06 Revised Laws of Saint Lucia 2008.
[14] Judgment- Para. 31.
[15] [2009] UKPC 3.

> **alternative remedy for a claimant under the LAA who, having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA.** This conclusion does not depend on res judicata or estoppel properly so called; it follows simply from a correct understanding of the statutory machinery (see Byron JA in Portland-v- Joseph, 25th January, 1993, Civ. App. No. 2 1992)." (Emphasis added).

He then concluded at para.[37] thus:

> "… rectification would not be an alternative remedy for a litigant in a case such as the instant one since the claimants [Appellants] failed to make use of the land adjudication process where the facts about the land were canvassed. It is not proper for an issue of fact decided by the Adjudication Officer to be challenged after the adjudication period expired and the successful applicant has died unless the Adjudicators decision is so patently wrong that the court would be obliged to find mistake or fraud." He further found [para. 42] that the argument surrounding the 'so called mistake is mere speculation".

The Appeals

[12] In the Prescription Claim the appellants by their amended grounds of appeal contend that:

(i) The 14 month delay in rendering judgment is excessive and resulted in errors made by the trial judge thereby rendering the judgment unsound ("the Delayed Judgment Issue");

(ii) the trial judge failed to properly weigh the evidence and in particular to consider the defence of the appellants thereby rendering the judgment unsound ("the Prescription Defence Issue"); and

(iii) the trial judge erred in failing to give effect to the right of occupation of the appellants enjoyed over the land and which is protected by section 28(g) of the LRA and Article 2103 of the **Civil Code** ("the Section 28 (g) LRA Issue").

[13] In the Rectification Claim the appellants contend that:

(i) The trial judge erred on the matter of the adjudication process and asked himself the wrong question and thus his decision on the issue of mistake was wrong in law ("the Mistake Issue");

(ii) the trial judge made findings of facts on no evidence and arriving at conclusions without facts to support them ("the Factual Findings Issue");

(iii) that the judgment is wholly unsupported by the evidence ("The Evidence Issue").

[14] It is proposed to deal firstly with the issues raised on the Prescription Claim by dealing with them in the inverse order and then to treat with the issues raised on the Rectification Claim.

The Section 28(g) LRA Issue

[15] The appellants contend that the learned judge ought to have given effect to their right of occupation enjoyed over the Disputed Land as protected by section 28(g) of the LRA. Section 28 of the LRA deals with overriding interests. The overriding interest recognised by section 28(g) is '*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.'* Section 28(g) protects the rights enjoyed by persons such as lessees or licensees. The difficulty with this ground of appeal is that no claim was made in the court below nor was it anywhere pleaded by the appellants that they held or were entitled to be treated as having an overriding interest in respect of the Disputed Land. Furthermore, they rejected any notion of being in occupation of the Disputed Lands as tenants. It is no function of the trial judge to find or formulate issues for a party which have not been pleaded or to decide a case on an issue which has not been raised. This is as much a matter of fundamental natural justice as well as the established principle enshrined in the

rules of procedure requiring a party to set out his case[16]. Notwithstanding, that with the new dispensation ushered in by CPR 2000, where the rules about pleadings may not be as strictly applied as in the past, pleadings are still a very necessary feature in the adversarial process and in keeping with the overriding objective of dealing with cases justly. A party must know the case he has to meet so that he has a fair opportunity to address it. Failure to do so flouts a very salutary tenet of the principles of the natural justice. As this Court pronounced in **George Knowles v Elaine Knowles**,[17] per Barrow JA: *'it cannot be a satisfactory situation that one case is 'pleaded' and the judgment is pronounced on a different case.'* The case pleaded by the appellants was simply that they had prescribed against the respondent by thirty years and thus the respondent was barred from making a claim for possession of the Disputed Land. The Defence is completely devoid of any averment by the appellants claiming an overriding interest under section 28 (g) of the LRA. To allow this ground on appeal which was clearly not the issue in the court below would be unfair and render the entire case one wholly different to the case tried below. Furthermore, it would involve an acknowledgement of the rightful entitlement of Jacob Fanus as registered proprietor and run completely counter to the defence of prescription raised with the object of defeating in its entirety Jacob Fanus' claim. Accordingly, this ground of appeal cannot be allowed.

The Prescription Defence Issue

[16] Under the **Civil Code** of Saint Lucia Article 2103 coupled with the **Supreme Court - Prescription by 30 Years (Declaration of Title) Rules**[18] title to land is prescribed by thirty years. Article 2047 of the **Civil Code**[19] allows for positive prescription as well as for extinctive or negative prescription. It states in part as follows:

> "Prescription is a means of acquiring property or of being discharged from an obligation by lapse of time, and subject to the conditions fixed by law.

[16] See CPR Rule 10.5
[17] ANUHCVAP2005/0017 (delivered 18th September 2006, unreported).
[18] Cap.2.01 Revised Laws of Saint Lucia, 2008.
[19] Cap.4:01Revised Laws of Saint Lucia, 2008.

> In positive prescription title is presumed or confirmed and ownership is transferred to a possessor by the continuance of his possession.
>
> Extinctive or negative prescription is a bar to … any action for the … acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law"

[17] The appellants have made plain that they are not pursuing this appeal on the basis of positive prescription and that a declaration of the nature sought in their amended defence and counterclaim was unattainable on their pleaded case which was based on negative prescription thus setting up a bar to Fanus' claim, rather than seeking ownership of the Disputed Land by prescription. This is accepted. The criticism made of the learned judge however, is that he treated the claim as one of positive prescription by the appellants rather than one for negative prescription. This is so, says counsel for the appellants, because the learned judge referred to the principles and elements which must be satisfied to support a claim for title by prescription – that is, the user must be, as with the common law principle, '*nec vi, nec clam, nec precario – that is to say that the party claiming title by prescription cannot do so if his possession is by force, in secrecy, or by permission of the person with greater title'*[20]. Counsel asserts in essence that it is not necessary for these elements to be shown in respect of negative prescription. He cited no authority for this proposition. He appeared to suggest that once the prescription bar was raised by way of defence this was sufficient.

[18] With the utmost respect to learned counsel, we disagree. The same elements required for establishing positive prescription applies equally to setting up negative prescription as a bar. Article 2057 of the **Civil Code** make this clear. It states as follows:

> "For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, **and as proprietor**" (emphasis added).

[20] See Judgment para.[14].

This Article is not confined to positive prescription only. It speaks to the elements which must be established for prescription generally whether for use as the sword (positive prescription) or the shield (negative prescription). This roundly encapsulates the common law principles required for establishing adverse possession. Accordingly, where the defence of prescription is raised, evidence must be led which satisfies Article 2057 of the **Civil Code** in order to successfully defeat a claim made by a person as owner.

[19] The evidence before the learned judge comprised the witness statements of the appellants and other relatives of the appellants filed in 2007. The common theme throughout the witness statements which was their evidence in chief was that the appellants lived on the land, some for over 50 years, and that the land is family land and *'there is enough land for everyone to get land'.* They all say that the land belonged to Louis Seraphin deceased, and then seek to establish their kinship or heirship presumably for succession rights to the estate of Louis Seraphin.

[20] In cross-examination of the respondent she pointed out several of the appellants who she knew to be on the land. No evidence is elicited as to the nature of their occupation save than to establish the familial relationship between the appellants to Louis Seraphin and that of Jacob Fanus to Louis Seraphin. The appellants in cross examination again appear to assert their right of occupation as "heirs" or descendants of Louis Seraphin and considered that the land belonged to Louis Seraphin. Some of the appellants accepted that they received a Notice to Quit from Jacob Fanus. Nowhere in the evidence adduced before the court proffered by the appellants can it be said that it rose to the quality and particularity of establishing the requisite elements for prescription. Long occupation in and of itself does not equate to prescription. As submitted by counsel for the respondent, the claim for title was reasonably straight forward and the learned trial judge examined the issue in relation to the defence of prescription as well as the claim for prescription raised by the appellants. They failed to establish that they had prescribed against the respondent.

[21] The learned judge at paragraph 15 of his judgment after referring to the elements necessary for claiming prescriptive title referred to the fact that some of the appellants *'claimed to have been on the land before the claimant'.* He held however, that when Jacob Fanus got registered title in 1987, the appellant's possession was interrupted. This was a reference to the Land Adjudication and Registration process which took place in Saint Lucia during the period 1983 to 1987. The learned judge then looked at the period of possession post 1987 to present [2007] and concluded that the period fell far short of thirty years. As alluded to earlier, he also found that the appellant's occupation of the Disputed Land was not peaceable and that the Notices to Quit being served since 1987 were valid and operated as Jacob Fanus' protests to the appellants' use of the Disputed Land.

[22] Learned Counsel for the appellants sought to suggest during the hearing of the appeal that the learned judge was wrong as a matter of law to hold that Jacob Fanus' registered title obtained in 1987 interrupted prescription. He says that the learned judge made no finding as to when prescription started to run and that by 1987 St. Torrance Matty was on the land for in excess of thirty years. He also relies on Article 1978 of the **Civil Code** which simply states that *"registration does not interrupt prescription"*. He also contends that the registration process which occurred during the Land Registration Titling Project ("LRTP")[21] does not constitute a judicial demand under Articles 2084 and 2085 of the Civil Code.

[23] With the greatest of respect to counsel for the appellants these arguments, again unsupported by authority, in our view miss the point. They appear to completely overlook the fact that the LRTP was not simply about registration of title but very importantly that all first registrations were predicated upon an adjudication under the LAA. This was so whether it flowed from a contested claim or (as is the case

[21] This is the terminology commonly used in the State of Saint Lucia to describe the Land Adjucation Process and the Land Registration process taking place in the mid-1980s under the LAA and the LRA.

here) an uncontested claim. As the Privy Council said in **Louisen v Jacob**[22] at paragraph 39:

> "The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration of title. The LAA was concerned, as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to "such investigation as he or she considers necessary") before completing and signing the adjudication record for certification by the adjudication officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of the LRA) for first registration. If the confirmed adjudication record appeared to be in order there would be no reason for the Registrar to seek to go behind it."

[24] It is common ground that Jacob Fanus claimed the Disputed Land by long possession. He alone filed a claim to the land during the Land Adjudication process which was part and parcel of the LRTP. His claim to the land was not disputed by any of the appellants. Neither did any of the appellants seek to submit any claim in relation thereto whether by way of long possession or otherwise. The Disputed Land, following on the Adjudication process was then first registered to Jacob Fanus. He was first registered with provisional title in 1987. His provisional title was only upgraded to absolute title in 2005. During that 18 year period (between provisional title and the title being made absolute), no challenge was made by any of the appellants to Jacob Fanus' title.

[25] In our view the learned judge was right to recognise the intervention of the LRTP which by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia. It provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed. It was a holistic scheme

[22] [2009] UKPC 3.

implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia. It provided for a system of land registration (the "Torrens system") similar to that undertaken and implemented in the 1970s in a number of Commonwealth Caribbean States and United Kingdom Overseas Territories.

[26] In having regard to the entire scheme of the LRTP it is inconceivable that the learned judge should reckon the prescription period for the purpose of defeating the claim of Jacob Fanus as commencing from some period prior to when Jacob Fanus made his claim during the LRTP from which his registered title then flowed. To argue that Jacob Fanus' title which he himself only obtained by long possession in 1987 pursuant to the adjudication process was by that time extinguished by the appellants having prescribed against him would be nonsensical and an utter disregard for the land adjudication process where registered title could be obtained not only based on documentary title but also by possessory title. Indeed Jacob Fanus' *'greater title'* against which the appellants could prescribe only crystallised in 1987 as a result of the adjudication and registration in his name pursuant to the LRTP.

[27] For similar reasons reliance on Articles 1978, 2084 and 2085 of the **Civil Code** does not assist the appellants, and, no matter how ingenious the attempt, these Articles cannot be made to fit into the LAA and LRA scheme which came into operation in the State of Saint Lucia notwithstanding the **Civil Code**. While the LAA may have become spent in terms of its operational life having regard to its objective, the LRA is very much a part of Saint Lucia's legal landscape and it co exists alongside the **Civil Code**. The Articles of the Code prayed in aid by the appellants are simply inapplicable to the prescription defence as relied upon by them. Accordingly, the learned judge was right to hold that the relevant period for the purposes of prescription operating as a bar to Jacob Fanus' claim must be reckoned, not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of

prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed.

[28] Furthermore, paragraph [11] of the judgment shows that the learned judge was well seized of the issue. He opined as follows:

> "In order to secure registration of the land Jacob Fanus swore an affidavit under the Land Adjudication Act on 4th February 1986 which was a key requirement for acquiring title. All the defendants in their witness statements said that they were on the land in excess of 30 years, some claimed to have been occupying the land for even longer periods. The inference that I am inclined to draw from that, and in fact do draw, is that they could have, at the time that Jacob Fanus applied for title under the LRTP lodge[d] an appeal pursuant to s. 20 of the Land Adjudication Act (LAA). There was no appeal against the decision of the Adjudicating Officer within the 90 days' time limit for appealing. As a result the defendants cannot now be heard to challenge the title that was given to Jacob Fanus because they have delayed in seeking to pursue a right to which they lay claim. The time allowed for challenging the decision of the Adjudication Officer has long expired and the claim for possession by prescription is now statute barred."

To this we would add that they could have themselves filed a claim during the LRTP based on their long possession as alleged. This they have acknowledged not doing. There is no hesitation in concluding that the arguments advanced in support of the prescription defence are unsustainable.

The Delayed judgment Issue

[29] The appellants complain that the delay in delivering the judgment (some 14 months) contributed to errors made by the learned judge. We agree that the period of fourteen months may be considered excessive. However, it is common ground that delay in and of itself does not automatically render a judgment or finding unsound. To warrant interference by an appellate court it must be shown that the delay resulted in the judge making significant consequential error in his reasoning and thus to the conclusions reached. In the recent decision of the Privy Council in **Monica Jane Ramnarine v Chandra Bose Ramnarine**[23] where the delay was

[23] [2013] UKPC 27 - from the Court of Appeal of Trinidad and Tobago.

over four years, Lord Wilson quoted with approval a passage from the judgment of Lord Scott in the Privy Council's earlier judgment in **Cobham v Frett**[24] as follows:

> " … if excessive delay, and they agree that twelve months would normally justify that description, is to be relied on in attacking a judgment, a fair case must be shown for believing that the judgment contains errors that are probably or even possibly, attributable to the delay. The appellate court must be satisfied that the judgment is not safe and that to allow it to stand would be unfair to the complainant."

Lord Wilson then opined at paragraph 22 thus:

> "In the present case, gross though was the judge's delay in its delivery, the Board fails to find significant consequential error in the reasoning of his judgment…."

[30] In the present case the gravamen of the appellants' complaint is that the learned judge treated the case as one of positive as distinct from negative prescription. At paragraph 9 of his judgment the learned judge stated the issue this way:

> "The sole issue which falls to be determined … is whether the Defendants [Appellants] have obtained title by prescription having allegedly lived on the disputed land in excess of 30 years which would bar the claimant's [the Respondent] claim for possession of it."

In our view, even though the learned judge may be said to have approached the matter by considering positive prescription, he was quite seized of the fact that the appellants were relying on 30 years prescription to defeat the respondent's claim. Whether he considered prescription from the positive or negative vantage point would yield for all practical purposes no different result. As we have set out above, the elements required for establishing prescription, be it positive or negative, are the same. The procedure to be employed may be different depending on whether one is asserting positive prescription by presenting a claim for ownership or by defending a claim brought by the owner in defeating the owner's claim.

[31] Further, the learned judge's analysis of the evidence as considered in his judgment clearly demonstrates an understanding and a full appreciation of the

[24] [2001] 1 WLR 1775.

issue he was called upon to determine. This is so despite the fact that much of the evidence sought to establish a chain of ownership as heirs of Louis Seraphin whom the appellants believed owned the Disputed Land and thus the person in which the root of title resided. They sought to establish this by virtue of a Deed which the learned judge found to be unhelpful. On the one hand the appellants appeared to be relying on the basis of being heirs of Louis Seraphim while on the other, claiming to have prescribed as against Jacob Fanus although the suggestion was that he too was considered a descendant from Louis Seraphin and entitled to share. Thus it appears that the appellants themselves were confused as to the basis of their claim. While it is accepted that there was delay in delivery of the judgment we discern no error in the judge's reasoning which is attributable to the delay in the delivery of the judgment. Overall, we consider that the learned judge's reasoning and conclusion cannot be faulted. He was clearly focused on the issue despite the confused bases, as shown in the witness statements, on which the appellants put forward their case. There was accordingly no reason to disturb his findings and his decision was confirmed and the appeal dismissed.

Conclusion

[32] For the reasons given the appeal was dismissed.

The Mistake Issue

[33] The remaining issues arise in the Rectification Case. The appellants contend that the land register for the Disputed Land should be rectified by recording the ownership of the Disputed Land as being "*the heirs of Louis Seraphin"* on the basis of mistake. Section 98 of the LRA provides as follows:

> "**RECTIFICATION BY COURT**
> (1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the

rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default."

[34] The appellants sought to say that a mistake occurred in the adjudication process which presumably was carried over into the registration process. Reliance is placed on the decision of the Privy Council in **Louisien v Jacob**[25] an appeal from the Court of Appeal, Saint Lucia, which considered the issue of mistake in relation to a rectification claim such as the present. Prior to **Louisien** there were the decisions of this court in **Skelton v Skelton**[26], and **Webster v Fleming**[27] which authoritatively established that rectification of the register is available only if the mistake in question (or when fraud is in question, the fraud) occurred in the process of registration. The Board referred to this statement of the law as established in the **Skelton** and **Webster** cases, and opined that the principle *is a correct and useful statement of the law"*[28] but added two footnotes by way of explanation or amplification in the following terms:

> "A mistake in the process of registration" is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.
>
> Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Rectification is available. Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to nullity) in the process of adjudication. That mistake gets carried forward to the registration process, since the staff of the Land Registry are presented

[25] [2009] UKPC 93.
[26] [1986] 37 W.I.R. 177.
[27] Anguilla Civil Appeal No. 6 of. 1993.
[28] Louisien para. 41.

with a record which does not correctly embody the adjudication officer's final decision. Again, rectification is available. That is Webster v Fleming.

In their Lordships' opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such enquiries, and proceed on the basis of a defective adjudication record, that may amount to repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available."

[35] The mistake here is said to be that:

(a) The demarcation process ought to have revealed the existence of the occupants on the Disputed Land;

(b) the Deeds showing the Estate of the late Louis Seraphin were registered and accessible to the adjudication and registration officers and their act of awarding the Disputed Land to Jacob Fanus based on long possession was in wanton neglect of their duties; and

(c) the use of one claim form to claim two different parcels of land (parcels 135 and 137) ought not to have escaped the scrutiny of the adjudication officer and the registration officers.

[36] There is nothing in these points. These matters which are said to be mistakes are nothing more than a grievance belatedly, of the manner in which the adjudication officer performed his functions without any evidential basis to show that they were in fact mistakes. There is nothing to show that the adjudication officer made an obvious error in completing the adjudication record, or that, the adjudication record was mistakenly transcribed unto the register, or that the recording officer altered the adjudication record, all of which, based on the observations made in **Louisien,** would ground a claim for rectification. Instead, what is being complained of, in essence, is that the adjudication officer failed to have due regard to various matters and thus arrived at the wrong decision. This is not a mistake

which may ground a rectification claim under section 98 of the LRA but is in every sense the complaints of a party aggrieved by the decision of the adjudication officer and one for which redress by way of appeal was specifically made available under the LAA but which was not utilised. We can do no more than reiterate and adopt, as did the trial judge in paragraph 36 of his judgment, the statement of the Board in **Louisien** at paragraph 40 which has already been set out at para [11] above. We would simply add that rectification under the LRA is not an alternative remedy for a claimant who simply failed to avail himself of the processes for making or challenging a claim under the LAA, or availing himself in any respect of the avenues for review or appeal provided thereunder.

The Factual Findings Issue

[37] The appellants complain of the judge's factual findings at paragraphs 19, 21 and 39 of his judgment and contend that the learned judge gave no reasons for his findings. They say further that he ignored salient evidence which clearly showed that the land was awarded to Jacob Fanus by mistake and that this was therefore a defect in the trial process warranting interference by this court. They rely on the statement of Lord Wilberforce in **Lucky v Tewari**[29] in which, in the circumstances of that case relating to the circumstances of the execution of a will and the evidence of the two attesting witnesses, the Court of Appeal and the Board, despite the advantage of the trial judge in seeing and hearing the two attesting witnesses and other witnesses, were compelled to the conclusion that the trial judge's appreciation of their evidence (which was a total rejection of it) was faulty to such a degree that it compelled interference by the appellate court.

[38] At paragraph 19 the learned judge held that none of the appellants had established that they were legitimate heirs of Louis Seraphin and held that they could not claim entitlement to property on that ground. I have already alluded to this above where it seemed that the appellants were claiming to be entitled to the Disputed Land by virtue of succession as heirs of Louis Seraphin. Based on the evidence or, more accurately, the lack of evidence, before the learned Judge he

[29] (1965) 8 WIR 363 at pg. 366.

was entitled to conclude that the appellants had not established that they were lawful heirs of Louis Seraphin. In any event even had the learned judge found that they were, this would not have assisted the appellants in their claim for rectification. Jacob Fanus' title did not rest on a root of title grounded on the basis of a predecessor-in-title through succession but rather on the basis of long possession. This finding would have made no difference to the outcome.

[39] At paragraph 21 the learned judge stated that '*a number of persons made claims to lands in the area of the disputed land but only Jacob Fanus was successful in relation to the disputed parcel.'* The appellants suggest that the learned judge thus treated the Disputed Land as having been subject to a disputed claim before the adjudication officer and this was factually wrong. With the utmost respect to counsel, this is a misreading of what the learned judge stated. He said no more than that Jacob Fanus was successful in relation to the land which was in dispute before him, not that there were disputed claims during the adjudication process in respect of the Disputed Land. This is clear by his reference to Persons who made claims to lands '*in* ***the area of*** *the disputed land.'* There is accordingly no merit in this complaint.

[40] At paragraph 39 the learned judge referred to the *"alleged rightful heirs"* that *"were not successful in preventing Jacob Fanus from convincing the Adjudicator to award title to him."* There was some evidence led which suggested that an heir (one Louis Fanis) of Louis Seraphin had made a claim to the adjudicator in 1986. This claim was apparently not accepted[30]. We do not understand the learned judge to be saying that there was a dispute as between the rightful heirs of Louis Fanus on the one hand and Jacob Fanus on the other. Rather the learned judge's statement can only be taken as an observation having regard to this bit of evidence. In any event, this bit of evidence, and having regard to the basis of the claim would not, for the reasons set out earlier, have taken the matter any further in favour of the appellants.

[30] See pg. 51 ROA, Bundle B.

[41] None of the factual findings complained of warrant a **Lucky v Tiwari** treatment by this court as urged by the appellants.

The Evidence Issue

[42] This issue was more in the nature of a general "wrap-up" in respect of the complaint levelled at the judge in the overall treatment of the evidence. These evidential matters have in our view been sufficiently canvassed in the earlier ground. Furthermore, the appellants seek to introduce other matters such as entitlement to an overriding interest pursuant to section 28(f) of the LRA which has nothing to do with rectification under section 98 of the LRA and which, for the reasons earlier set out, cannot be entertained. Suffice it to say we are satisfied that the learned judge was fully seized of the issue before him and fully appreciated the evidence led by the parties. He cannot be said to have drawn erroneous conclusions therefrom which lead him to a wrong decision and which therefore warranted interference by this court.

Conclusion

[43] For the reasons set out above the complaints made by the appellants in respect of all of their grounds were found to be wholly unmeritorious and the appeal accordingly dismissed.

Janice M. Pereira, DBE
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Mario Michel
Justice of Appeal