

EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2016/0001

BETWEEN:

MARLON MILLS

Appellant

and

STACEY MCKIE
(Executrix of the Will of Hughson McKie, deceased)

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal

Appearances:

Mr. Roger Forde, QC with him, Mr. Jomo Thomas, for the Appellant
Mr. Parnell Campbell, QC with him, Ms. Mandella Campbell,
for the Respondent

2017: May 9;
2018: June 14.

Civil appeal – Establishing title to land – Proving factual possession and animus possidendi – Who is a paper owner or paper title holder of land - Whether trial judge erred by treating the respondent as the holder of a paper title and relieving him of the responsibility for proving factual possession and animus possidendi – Section 3 of the Statute of Frauds

The respondent, Stacey McKie, applied to the High Court for an injunction to restrain the appellant, Marlon Mills-Browne, and her servants or agents, from exercising any acts of possession and ownership over the disputed lands at Villa in the Parish of St. George in Saint Vincent and the Grenadines and an order that a survey plan prepared at the instance

of the appellant be either cancelled or rectified so as to remove any inference arising from it as to ownership of the said lands by the appellant.

By consent order dated 8th June 2012, the court ordered the parties to maintain the status quo in relation to the disputed land until trial of the matter. On 6th June 2012, the respondent had filed a fixed date claim against the appellant seeking the same orders for injunction and cancellation or rectification, and seeking also a declaration that during his lifetime Hughson McKie was seized as owner in possession of the said land.

The trial judge granted all three of the orders sought by the respondent. The learned judge found that the portion of land of which the appellant was claiming adverse possession was not precisely identified by her and that the appellant had not established a sufficient degree of factual possession and animus possidendi to dispossess the respondent as the owner of the land. Further, the receipts produced by the respondent evidenced full payment of the purchase price of the land by Hughson McKie to the previous owner, Mr. L.M. Punnett, and made Mr. McKie the paper owner of the land.

Dissatisfied with the decision of the trial judge, the appellant appealed against the judgment, contending that the learned judge wrongfully ascribed ownership of the disputed land to the respondent (as the personal representative of Mr. Hughson McKie) and treated the respondent as the holder of a paper title to the land, thereby relieving her of the responsibility for proving factual possession and animus possidendi.

The issues for this **Court's determination were**: (1) whether the deceased Hughson McKie was the paper owner of the land by virtue of having receipts evidencing payment made by him to the prior owner, Mr. Punnett; (2) did Hughson McKie purchase the land from Mr. Punnett and take possession of it and thereby become the owner of the land; (3) was the respondent required to prove that Mr. McKie had factual possession and animus possidendi continuously for 12 years prior to issuing the claim; (4) did the trial judge err in law in holding that the appellant had not been in factual possession of an exclusive nature of the whole or a part of the disputed land, with the requisite intention, since 1996; and (5) did the learned judge err by failing to properly analyse the evidence and give effect to the reasonable inferences to be drawn from a consent order dated 21st June 2013.

Held: dismissing the appeal and awarding costs to the respondent, that:

1. There is no Torrens land registration system in Saint Vincent and the Grenadines and so the transfer of title to land must be effected in accordance with the common law and applicable local and UK legislation. Having regard to section 3 of the UK Statute of Frauds, which remains law in Saint Vincent and the Grenadines by virtue of section 5(1) of the Application of English Law Act, and consistent with cases involving title to land which were decided with reference to the UK Statute of Frauds, the transfer of an interest in land in Saint Vincent and the Grenadines may be effected by a deed of conveyance or by a note in writing signed by the person transferring the interest or an agent of the transferor lawfully authorized to do so.

Auerbach v Nelson [1919] 2 Ch. 383 applied; In the matter of an application for a possessory title to land by Lyndon and Murlin Primus SVGHPT2014/0050 (delivered on 4th May 2015, unreported) applied; Section 3 of the UK Statute of Frauds (1677) Chamber 3 29 Cha 2 applied; Section 5(1) of the Application of English Law Act, Cap. 12, Revised Laws of Saint Vincent and the Grenadines, 2009 applied.

2. Title, in the context of property, refers to the right which a person has to the ownership of the property. In terms of title to land, the right may be established by long possession of the land, with the intention to possess it as owner to the exclusion of everyone else. Title may also be established by a deed or other note in writing signed by or on behalf of the transferor.
3. If, in the context of a dispute as to the ownership of a portion of land, one of the parties to the dispute produces a note duly signed by the transferor or his lawfully authorized agent, identifying the transferor and the transferee and the location, size and price of the land, the transferee under the note can properly be considered by the court adjudicating the dispute to be the holder of the paper title to the disputed land, or the paper owner of the land, and to be entitled to the presumption in his favour that he has possession of the land. On the facts of this case, the trial judge was correct in finding that the receipts produced by the respondent evidencing payments made by Mr. Hughson McKie to the previous owner of the land for the purchase of the land constituted a note in writing which entitled the respondent (as the personal representative of Mr. McKie) to be considered by the court to be the holder of the paper title to the land or the paper owner of the land.
4. By virtue of the finding that the respondent is the paper owner of the land, the court must ascribe possession of the land to her and she will not be required to establish factual possession of the land and animus possidendi in relation to it. Instead, the onus is on the appellant, as the party seeking to dispossess the paper owner, to establish that she was in adverse possession of the land for a period in excess of 12 years, by satisfying the court that she had exclusive possession of it with the intention of possessing it to the exclusion of all others, including the paper owner, for a continuous period of over 12 years immediately preceding the institution of the proceedings against her.

Hector Caesar Luke v Bernard Alexander DOMHCV2001/0161 (delivered 28th October 2002, unreported) referred.

5. The authorities clearly establish that a person seeking to dispossess the owner of land by adverse possession must identify with precision the land being claimed and must establish a sufficient degree of factual possession and animus possidendi to prove his or her clear and unequivocal possession of the land to the

exclusion of all others, including the paper owner. On the facts of this case, the land which the appellant was claiming adverse possession of was not precisely identified by her and she had not established a sufficient degree of factual possession and animus possedendi to dispossess the respondent as the paper owner of the land.

JUDGMENT

- [1] MICHEL JA: This is an appeal against the judgment of a trial judge on a land dispute in Saint Vincent and the Grenadines where the Torrens system of land registration does not exist and title to land is determined by the common law and applicable local and UK law.

Background

- [2] By notice of application filed on 11th July 2011 the respondent, Stacey McKie (in her capacity as executrix of the Will of her deceased husband, Hughson McKie) applied to the High Court for the following orders to be made against the appellant, Marlon Mills-Browne:

(1) An injunction to restrain her, by herself, her servants or agents, or howsoever otherwise, from entering, fencing, trespassing upon or exercising any acts of possession or ownership of certain lands at Villa in the Parish of St George in the State of Saint Vincent and the Grenadines; and

(2) An order that a survey plan derived from a survey of the said lands undertaken by a licensed land surveyor at the instance of the appellant be either cancelled or rectified so as to remove any inference arising from it as to the ownership of the said lands by the appellant.

- [3] By consent order dated 8th June 2012, the court ordered that the parties do maintain the status quo in relation to the disputed land until trial of the matter.

- [4] Meanwhile, on 6th June 2012, the respondent had filed a fixed date claim (with statement of claim) against the appellant seeking the same orders for injunction and cancellation or rectification, and seeking also a declaration that during his lifetime Hughson McKie was seized as owner in possession of the said land. The appellant filed a defence and counterclaim on 25th June 2012 and the respondent filed a reply to the defence and a defence to the counterclaim on 31st March 2014.
- [5] The case came up for trial on 17th, 18th, 26th and 27th November 2015 and on 16th December 2015, judgment was delivered by the learned trial judge granting all three of the orders sought by the respondent.
- [6] On 8th January 2016, the appellant appealed against the judgment on the following grounds:
- (1) That the learned trial judge misdirected himself and/or erred in law in holding that the late Hughson McKie had purchased the disputed land.
 - (2) That the learned trial judge misdirected himself and/or erred in law in holding that the late Hughson McKie occupied the disputed land since the year 1957.
 - (3) That the learned trial judge misdirected himself and/or erred in law in holding that the late Hughson McKie was a paper owner of the disputed land and as such was entitled to the presumption of possession of the said land.
 - (4) That the learned trial judge misdirected himself and/or erred in law in holding that the late Hughson McKie had obtained a possessory title to the disputed land.
 - (5) That the learned trial judge failed to properly analyse the evidence and give effect to the reasonable inferences to be drawn from the consent order dated 21st June 2013.

(6) That the learned trial judge misdirected himself and/or erred in law in determining that the late Hughson McKie or persons claiming through him were not obliged to prove that the said Hughson McKie had factual possession of an exclusive and undisturbed nature of the disputed land for a continuous period of twelve (12) years prior to the commencement of the claim and that the said possession was accompanied by the requisite intention to possess the said land as owner thereof and as such was entitled to bring the claim against the appellant.

(7) That the learned trial judge misdirected himself and or erred in law in holding that the appellant had not been in factual possession of an exclusive and undisturbed nature of the entire parcel of the disputed land since 1996 and that the said possession was accompanied by the requisite intention to possess the said land as owner thereof.

(8) That the learned trial judge misdirected himself and or erred in law in holding that the appellant did not have factual possession of an exclusive and undisturbed nature of at least 10,000 square feet of the disputed land since 1996 and that the said possession was accompanied by the requisite intention to possess the said land as owner thereof.

(9) That the decision is against the weight of the evidence.

[7] Skeleton arguments (with authorities) were filed by the appellant on 30th November 2016 in support of her appeal, whilst the respondent filed skeleton arguments (with authorities) in opposition to the appeal on 30th December 2016.

Issues for determination

[8] Upon perusing the grounds of appeal, the skeleton arguments filed on behalf of the parties and the oral submissions made at the hearing of the appeal by learned **Queen's Counsel** representing the parties, it would appear that there are 5 issues for determination in this appeal:

- (1) Was Hughson McKie the paper owner of the disputed land by virtue of having receipts evidencing payments made by him to Mr. L. M. Punnett for the purchase of the land?
- (2) Did Hughson McKie purchase the disputed land from Mr. Punnett and take possession of it and thereby become the owner of the land?
- (3) Was the representative of the estate of Hughson McKie required to prove that Mr. McKie had factual possession of an exclusive and undisturbed nature of the disputed land for a continuous period of 12 years prior to the commencement of the claim against the appellant, and that the possession was accompanied by the requisite intention to possess the land?
- (4) Did the trial judge err in law in holding that the appellant had not been in factual possession of an exclusive nature of the entire parcel of disputed land or at least 10,000 square feet of it since 1996, and that the possession was accompanied by the requisite intention to possess the land as owner thereof?
- (5) Did the learned judge err by failing to properly analyze the evidence and give effect to the reasonable inferences to be drawn from a consent order dated 21st June 2013?

Appellant's submissions on grounds 1 to 6

- [9] In the **appellant's** skeleton arguments, grounds 1, 3 and 4 of the grounds of appeal were argued together. The appellant submitted that the fundamental complaint in these grounds is that the learned trial judge wrongfully treated Mr. Hughson McKie as the paper owner of the disputed land and, as a consequence, the trial judge relieved the respondent (as the claimant in the court below) of the evidential burden of establishing that she was in possession of the said land. The appellant submitted that it is settled law that the court will, prima facie, ascribe possession to the paper owner or a person who can establish title through the paper owner. The

appellant cited the Dominican case of Hector Caesar Luke v Bernard Alexander¹ as an authority for this submission. In that case, Rawlins J (as he then was) stated as follows:

“The court will, prima facie, ascribe ownership to the paper owner of land or a person who can establish title through the paper owner. The court can only ascribe possession to a person who does not have paper title if that person has factual possession and animus possidendi, the requisite intention to possess the land. Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land. The acts that constitute a sufficient degree of exclusive physical control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. The animus possidendi has been described as the intention to possess the land to the exclusion of all other persons, including the owner with **the paper title ...**”

- [10] The appellant submitted that the court should only ascribe possession to the respondent if and only if the respondent is a paper owner or is claiming through a paper owner. She submitted further that a person who is not a paper owner or who cannot establish title through a paper owner should not be prima facie entitled to possession and that person should first have to establish factual possession and animus possidendi with respect to any property over which he or she seeks to assert possession. The appellant submitted that there was no evidence on which the trial judge could support a finding that Hughson McKie was the paper owner of the property in respect of which the respondent sought to exercise rights of ownership. The appellant further submitted that the evidence disclosed that the respondent admitted that there was no deed of conveyance which vested in Hughson McKie any of the three lots it was claimed that he bought, and that there is no dispute that Mr. McKie did not have paper title to the disputed land. She submitted that the law does not allow the respondent to claim that Hughson McKie was in possession of the disputed land without evidence of paper title to the said land, and that the judge misdirected himself to have found otherwise.

¹ DOMHCV2001/0161 (delivered 28th October 2002, unreported).

- [11] The appellant referred to a consent order in a related but different case involving a neighbouring but different portion of land as providing support for her position that Hughson McKie was not the paper owner of the disputed land and should not have **'the benefit of the presumptions'**. She accordingly submitted that the judge was wrong when he held that the respondent was the owner of the disputed land and that the appellant had to show that she (the appellant) had been in adverse possession of the land. The appellant submitted that the respondent first had to prove that she and/or Hughson McKie before his demise was or were in possession of the disputed land for a fixed number of years, with the requisite intention.
- [12] At the hearing of the appeal, counsel for the appellant, Mr. Roger Forde, QC informed the Court that he proposed to deal with grounds 3 and 6 together, which was a bit confusing considering that in the skeleton argument filed on 30th November 2016 grounds 1, 3 and 4 were dealt with together, and substantially the same arguments were canvassed then as were canvassed before us in dealing with grounds 3 and 6. I will nonetheless give a brief summary of Mr. **Forde's** submission at the hearing of the appeal, even if there may be some repetition of the content of the skeleton argument.
- [13] At the hearing, Mr. Forde, QC submitted that the primary complaint in grounds 3 and 6 is that the learned trial judge wrongly ascribed ownership of the disputed land to the respondent and treated the respondent as a holder of a paper title, thereby relieving the respondent of the responsibility for proving factual possession and animus possidendi. He submitted that the respondent conceded, in paragraph 2 of her skeleton arguments, **that she was** "burdened to establish proprietary rights **over the disputed parcel of land**" and submitted therefore that the respondent carried the burden of proof. He submitted however that the judge proceeded to treat Hughson McKie as the paper owner when there was no evidence to support this. He submitted too that the trial judge made a finding that

Hughson McKie purchased the disputed land, but he contended that purchasing the land does not make you a paper owner; you need the conveyance.

[14] In his oral submissions, Mr. Forde, QC invited the Court to construe the previously referred to consent order in a reasonable manner and to conclude that it establishes that Hughson McKie was not a paper owner of the disputed land and that the respondent should have been required to prove factual possession and animus possidendi with respect to the land. Mr. Forde, QC reiterated that the trial judge treated the respondent as the true owner because he erroneously thought that the receipt gave Hughson McKie the paper title to the land, when the consent order showed that he merely had possession and not title.

[15] Although the appellant did not mention ground 5 of her grounds of appeal as one of the grounds to be addressed in the collective comprising grounds 1, 3, 4 and 6, reference was made to the consent order referred to in ground 5 in both the **appellant's skeleton argument and in the oral submissions made on her behalf** in addressing the collective. It is therefore convenient to address it here.

[16] The **appellant's** approach to the consent order dated 21st June 2013 in a case between the respondent and Martin Barnard, is to advance the argument that the respondent made certain concessions in the consent order relative to her dispute with Martin Barnard which concessions are inconsistent with her position in the present case, and that the trial judge ought to have made certain inferences adverse to the respondent arising from the concessions which she made and that, if he had done so, he would not have held that Hughson McKie was a paper owner of the disputed land.

Respondent's submissions on grounds 1 to 6

[17] In her skeleton arguments, the respondent submitted in response to grounds 1, 3, **4 and 6 of the appellant's grounds of appeal**, that the trial judge was correct in treating Hughson McKie as the paper owner of the disputed land. She submitted

that in Saint Vincent and the Grenadines there is no 'Torrens' land registration system and the common law still holds sway in the law of real property. She submitted that, under the common law, title to land can be established either by **deed or by a 'note in writing signed by the party ... granting the same'**, accompanied by physical entry upon the land to demonstrate physical possession thereof. The respondent cited a Saint Vincent and the Grenadines High Court case entitled *In the matter of an application for a possessory title to land by Lyndon and Murlin Primus*² as authority for the submission on the establishment of title to land in Saint Vincent and the Grenadines. In that case, Esco Henry J ruled that, "[i]n order to be effective, an inter vivos gift of real property must be **evidenced by a written note made by the person making the gift**". The judge supported her ruling by reference to section 3 of the UK Statute of Frauds, which continues to apply to Saint Vincent and the Grenadines by virtue of section 5(1) of the Application of English Law Act.³

[18] Section 3 of the UK Statute of Frauds provides that:

"No leases, estates or interest either of freehold or terms of years or any uncertain interest not being copyhold or customary interest... of in to or out of any messuages lands tenements or hereditaments shall at any time ... be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorized by writing or by act and operation of law".

[19] The respondent submitted that there are receipts dated 7th March 1955, 22nd May 1956, 2nd June 1956 and 14th June 1958 which disclose the name of the purchaser of the disputed land, the size of the land, the location of the land and the selling price of the land, and that the receipts were signed on behalf of the vendor, Mr. L. M. Punnett. She submitted that the trial judge was satisfied on the evidence that Hughson McKie had paid the full purchase price of the disputed land to the previous owner, Mr. Punnett, and had thereafter assumed full possession and ownership of the land, with his receipts as his paper title.

² SVGHPT2014/0050 (delivered 4th May 2015, unreported).

³ Cap.12, Revised Laws of Saint Vincent and the Grenadines, 2009.

[20] On the issue of the consent order in the case between the respondent and Martin Barnard, the respondent submitted that the consent order was merely a settlement arrived at between the respondent and another party on similar issues, but was not a determination made by a court after the examination of evidence and the application of law and it did not entail any admissions as to the legal rights of either of the parties to the consent order. The respondent also submitted that the proper inferences to be drawn from the consent order were in fact inferences favourable to the respondent.

Discussion and analysis

[21] There is no Torrens land registration system in Saint Vincent and the Grenadines and so the transfer of title to land must be effected in accordance with the common law and local and applicable UK legislation. Having regard to section 3 the UK Statute of Frauds, which remains law in Saint Vincent and the Grenadines by virtue of section 5(1) of the Application of English Law Act, and consistent with cases involving title to land (such as the case of *Auerbach v Nelson*⁴ referred to by the respondent in her skeleton arguments) which were decided with reference to the UK Statute of Frauds, the transfer of an interest in land in Saint Vincent and the Grenadines may be effected by a deed of conveyance or by a note in writing signed by the person transferring the interest or by an agent of the transferor lawfully authorized to do so.

[22] I agree with Mr. Roger Forde, QC when he stated in his oral submission that purchasing the land does not make you the paper owner, but I do not agree with his suggestion that you must have a deed of conveyance in order to be the paper owner. A person may purchase a portion of land by an oral agreement with the owner of the land and payment of the purchase price, but have no deed or note in writing signed by or on behalf of the vendor. The person so purchasing may be contractually entitled to the ownership of the land and is likely to get an order from the court for specific performance by the vendor of his obligation to transfer title to

⁴ [1919] 2 Ch. 383.

the purchaser, but, until he has that order, he is not the paper owner of the land and his right to ownership of the land lies in equity only. In order to assert his right of ownership against a third party, the purchaser will require a deed or note in writing signed by or on behalf of the vendor to constitute him a paper owner of the land, or he may otherwise have to prove his factual possession and animus possidendi in relation to the land in dispute.

- [23] None of the authorities to which the Court was referred by **distinguished Queen's** Counsel on both sides, and none that I have found, has defined either the term 'paper title' or 'paper owner', and one must therefore construct a definition of the terms.
- [24] Title, in the context of property, refers to the right which a person has to the ownership of the property. In terms of title to land, the right may be established by long possession of the land, with the intention to possess it as owner to the exclusion of everyone else. Title may also be established by a document which specifies the property to which it refers, the person who is asserting the right to it, and the manner in which that right was acquired – whether by grant, by assignment, by purchase or otherwise. In the case of a purchase, the document should also contain the name of the vendor and the price or other consideration for which the property was sold.
- [25] The document establishing title may be a deed or other note in writing. A deed is a specific legal instrument signed, attested, delivered and, in some jurisdictions, sealed by the person transferring the property right to another person. A note in writing may be any written document, whether or not accompanied by any specific formalities. To constitute a note in writing that satisfies the requirements of the Statute of Frauds and qualifies to be called a paper title, the note must identify the property transferred, the consideration for the transfer, the name of the transferor and of the transferee, and it must be signed by or on behalf of the transferor.

- [26] I am of the firm view that if, in the context of a dispute as to the ownership of a portion of land, one of the parties to the dispute produces a note duly signed by the transferor or his lawfully authorized agent, identifying the transferor and the transferee and the location, size and price of the land, the transferee under the note can properly be considered by the court adjudicating the dispute to be the holder of the paper title to the disputed land, or the paper owner of the land, and to be entitled to the presumption in his favour that he has possession of the land.
- [27] As mentioned earlier, the appellant stated in her skeleton argument that the respondent and her witness both admitted that there was no deed of conveyance which vested the disputed property in Hughson McKie. In fact, the exact statement made by the respondent in her witness statement was: “[m]y deceased husband never had a Deed of Conveyance executed to formally vest title to the disputed property in his name”. The appellant then moved from this statement of fact to the **conclusion that “clearly there is no dispute that the respondent’s husband did not have paper title to the land”**. But the respondent and her witness did not say that Hughson McKie did not have paper title to the land, only that he **did not have** “a deed of conveyance executed to formally vest title to the said property in his name”. **The respondent did aver that “the purchase receipts and the land tax receipts exhibited in the Statement of Claim are indeed evidence of purchase of the subject lands by Hugh A. McKie”** (It was alleged and accepted that **the names ‘Hughson McKie’ and ‘Hugh A. McKie’ refer to the same person**). The trial judge accepted the receipts as evidencing the purchase of the land by Hughson McKie and evidently concluded that this made him the paper owner of the land, and I have already expressed my agreement with this conclusion.
- [28] The trial judge did not err therefore when he treated Hughson McKie as the paper owner of the disputed land, who could only be dispossessed by the appellant if the latter could satisfy the court that she was in adverse possession of the land for a period in excess of 12 years, by exercising exclusive physical possession of it with the intention of possessing it to the exclusion of all others, including the paper

owner. My answer to the first question posed in this appeal is accordingly in the affirmative.

[29] The determination by the trial judge that Hughson McKie was the owner of the land **(not just the paper owner) is justified by the judge's** factual finding that Mr. McKie had purchased the land from its previous owner, Mr. L. M. Punnett, paid for it in full, and thereafter went into possession of it. **The trial judge's own words were as follows:** “[t]he evidence led in this matter satisfied this court on a balance of probabilities that Hughson McKie purchased the disputed land and occupied it from 1957 **at the latest.**” The trial judge was also justified therefore, by virtue of this finding, to place the burden on the appellant to satisfy the court that she had dispossessed Hughson McKie (and his heirs) by adverse possession of the land for a period of at least 12 years. My answer to the second question posed in this appeal is accordingly in the affirmative.

[30] **In the appellant's skeleton argument,** it is conceded that the court will ascribe possession to the paper owner of land (or a person claiming through him) who will not be required to establish factual possession and animus possidendi in relation to the land. The appellant referenced the earlier quoted statement of Rawlins J in *Luke v Alexander* in that regard. Once the court was satisfied, therefore, that Hughson McKie was the paper owner of the disputed land, there was no need for the respondent (as his personal representative) to establish factual possession and animus possidendi in relation to the land. Instead, the onus would then be on the appellant to satisfy the court that the respondent was dispossessed by the **appellant's adverse possession of the disputed land for a continuous period of 12 years** immediately preceding the institution of proceedings by the respondent against the appellant.

[31] The trial judge was satisfied, on the facts and the law, that Hughson McKie was the paper owner of the disputed land, and my answer to the third question posed in the appeal is accordingly in the negative.

[32] The trial judge was also satisfied on the evidence that Hughson McKie did purchase the disputed land and entered into possession of it. At paragraph 12 of the judgment he stated that:

“**[t]he evidence led in this matter satisfied this court on a balance of probabilities that Hughson McKie purchased the disputed land and occupied it from 1957 at the latest.**”

[33] **As to the appellant’s submission on the alleged error of the trial judge in his** treatment of the consent order entered into between the respondent and Martin Barnard, I have three difficulties with it. Firstly, the appellant did not cite any authority for the proposition that it is open to a court to draw inferences adverse to a party in one case based on concessions made by the same party in a different case, with a different opponent, involving a similar but still different subject matter. Secondly, we are not here talking about matters conceded by a party in the course of giving evidence in previous proceedings, but rather a concession made by a party not to pursue one of his claims in a case whilst getting others of his claims in that case settled in his favour. Thirdly, the judge had the consent order before him and he heard the viva voce evidence of the parties on the issue and he accepted the evidence of the respondent, which he was entitled to do. In the circumstances, I would answer question 5 of the issues for determination in the negative.

[34] The appellant did not specifically mention ground 2 in her written submissions, nor was it mentioned in the oral submissions made on her behalf, but its content was sufficiently addressed in the submissions made on the other grounds and, in any event, nothing turns on it.

Appellant’s submissions on grounds 7 to 9

[35] **The appellant’s** submissions on grounds 7, 8 and 9 amount to a challenge of the **trial judge’s** factual finding that the appellant had not been in factual and exclusive possession of the disputed land, with animus possidendi, since 1996. The appellant essentially contended that there was ample evidence on the basis of which the trial judge could have found that the appellant had been in factual

possession of either the whole of the disputed land or at least 10,000 square feet of it, with animus possidendi, since 1996 and that there was no or insufficient evidence to the contrary. In his oral submissions at the hearing of the appeal, Mr. Forde, QC - apart from giving **flesh to the skeleton argument on the trial judge's erroneous finding of fact on the appellant's possession** of the disputed land - also returned to the issue of the judge erring in his determination that Hughson McKie was the paper owner of the land, which he submitted prevented the judge from putting any burden on the respondent to establish factual possession and animus possidendi of the disputed land and caused him instead to place that burden entirely on the appellant.

Respondent's submissions on grounds 7 to 9

[36] In response to the appellant's grounds 7 to 9, the respondent submitted that, based on the appellant's pleadings and on the evidence presented by her, the court could not even have determined what land the appellant claimed to have had adverse possession of, far less to have made a finding that the appellant had factual possession of and animus possidendi in relation to any portion of land. The respondent submitted that it was unclear whether the appellant was claiming possession of a strip of land which she had cleared, or a portion of land which she had fenced in 2011, or the entire portion of land comprising 44,207 square feet delineated on survey plan G51/33 commissioned by the appellant. The respondent submitted that a person seeking to establish adverse possession of land has the evidential burden of identifying with precision the land claimed, and that it cannot be left to the court to choose between various options and speculate on the area of land being claimed and its boundaries. The respondent submitted accordingly that the court could not countenance the making of any order in favour of the appellant in respect of adverse possession of any land of uncertain dimensions or boundaries. The respondent also submitted that the alleged acts of the appellant in relation to the land that she (the appellant) claimed to have been in adverse possession of were woefully inadequate to satisfy the requirements of

factual possession and animus possidendi necessary to establish possession of the disputed land.

Discussion and analysis

- [37] The authorities clearly establish that a person seeking to dispossess the owner of land by adverse possession must identify with precision the land being claimed and must establish a sufficient degree of factual possession and animus possidendi to prove his or her clear and unequivocal possession of the land to the exclusion of all others, including the paper owner.
- [38] On the facts as found by the trial judge, Hughson McKie was the paper owner of the disputed land; the portion of land which the appellant was claiming adverse possession of was not precisely identified by her; and the appellant had not established a sufficient degree of factual possession and animus possidendi to dispossess the respondent as the owner of the land.
- [39] I am satisfied that, on the evidence which was before him, the trial judge was justified in his findings that Hughson McKie was at least the paper owner of the disputed land, having purchased it from its previous owner, Mr. Punnett, and having a note in writing (in the form of the written receipts identifying the purchaser, vendor, location, size and price of the land) signed on behalf the vendor and, moreover, having taken possession of the land after purchasing it. I am satisfied too that the appellant did not discharge the burden which was consequently placed on her to prove that she had factual possession, of an exclusive and undisturbed nature, of the disputed land for a continuous period of at least 12 years prior to the institution of the claim against her, and that her possession was accompanied by the requisite intention to possess the land as owner to the exclusion of all others, including the paper owner.
- [40] I agree with the respondent that it was never certain exactly which part of the **respondent's land that the appellant was claiming possession of.** At times it

appeared that the appellant was laying claim to all **of the respondent's land in Villa**; **at other times it appeared to be all of the respondent's land, except the portion** claimed by Martin Barnard; at other times it appeared to be the 44,207 square feet of land delineated in Survey Plan G51/33 (if this is different from all of the **remainder of the respondent's land apart from the portion claimed by Martin** Barnard); at other times it appeared to be all **of the respondent's land, except the** forested area; it appeared at other times to be the portion of land which the appellant fenced in with her land in 2011; and yet at other times it appeared to be the portion of land which she had cleared outside of her boundary (whether included or not included in the fenced portion).

- [41] I also agree with the respondent that a court could not properly make an order in favour of the appellant without certainty as to what land she was claiming adverse possession of, and that the acts alleged to have been done by the appellant in relation to all or any part of the disputed land before the fencing of it in 2011 (like clearing part of the land and chasing off poachers) were not sufficient to satisfy the requirements for adverse possession, because these acts were not inconsistent with the possession in law of the owner of the land.

Conclusion

- [42] The findings made by the trial judge in the court below were justified on the evidence that he had before him or were findings which he could justifiably have made on the evidence before him. There is no basis therefore for appellate interference with the findings of the trial judge. The appeal is accordingly dismissed, with costs to the respondent of two-thirds of the amount ordered to be

paid by her in the court below.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur.
Louise Esther Blenman
Justice of Appeal

By the Court

Chief Registrar