

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**SVGHPT2013/0004**

**BETWEEN**

**KASSINDA WILLIAMS**

**(Substituted in place of ELSTE ELAINE WILLIAMS)**

**APPLICANT**

**AND**

**STEPHEN WILLIAMS**

**AND**

**GELLIZEAU KING**

**RESPONDENTS**

**Appearances:**

Ms. Mandella Campbell and Mrs. Cheryl Bailey for the claimant.

Mr. Richard Williams with him Ms. Danielle France for the respondents.

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2018: Apr. 10

Nov. 6

2019: Jan. 15

Feb. 12

Mar. 6  
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**JUDGMENT**

**BACKGROUND**

[1] **Henry, J.:** Elste Williams filed an Application on 22<sup>nd</sup> January 2013<sup>1</sup> for a declaration of possessory title to a parcel of land situated at Chateaubelair, Saint Vincent and the Grenadines ('the disputed land'). A house sits on the property. Ms. Williams claimed that she built it and thereby became

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<sup>1</sup> Which was amended on 4<sup>th</sup> February 2013.

entitled to all interests in it. She also averred that she enjoyed exclusive, continuous and undisturbed possession of the disputed lands for over 12 years. Her claim was opposed by her son Stephen Williams and a relative Gellizeau King. They alleged that they contributed towards the construction of the house as did Mr. King's late wife Keita King.

[2] The disputed land is registered in the name of Florence Nanton. She died on 9<sup>th</sup> March 1974. She was survived by three children – Winston and Benjamin Nanton (aka 'Chieftain') and Keita King née Nanton (Gellizeau King's wife). Mr. King maintained that he and Keita sent monies to Elste Williams to build the house. Elste Williams died before the case went to trial. Her daughter Kassinda Williams was substituted as applicant in her place, as representative for her estate. Stephen Williams is Kassinda Williams' brother.

[3] Stephen Williams and Gellizeau King alleged that Keita King and her brothers agreed that the disputed property would be 'devised to her' and that they verbally gave her the land. Mr. Williams and Mr. King claimed that after Florence Nanton's death, Keita King visited Saint Vincent and the Grenadines several times - in 1977, 1982, 1990, 1994 and 1998 and stayed with Elste Williams on the disputed land. It is accepted that she never returned permanently to Saint Vincent.

[4] Mr. Williams and Mr. King alleged that in or about 1985 Mrs. King gave permission to Stephen Williams to destroy the wooden house which was on the property and construct a concrete dwelling house with moneys she and Gellizeau King sent from England. They contended that Stephen Williams did so. They alleged further that in 2005, Stephen Williams commenced a second stage of construction on the dwelling house with his own funds and with financial contributions from Gellizeau King and his sister Zoe Williams. It is common ground among the parties that Este Williams and her children occupied the wooden house and the concrete house which replaced it.

[5] Stephen Williams and Gellizeau King pleaded and testified that they have made this claim on behalf of Florence Nanton deceased. They submitted that the original owner of the disputed land is Florence Nanton and that Stephen Williams is and was at all material times, the owner of the concrete house. They claimed further that Stephen Williams allowed his mother to reside in the concrete house with him. Mr. King testified that he was making no claim in his own right but on his wife's behalf. He and Mr. Williams submitted that they have a beneficial interest in the subject

property. I have found that they have no such interests.

## **ISSUES**

[6] The issues are:

1. Whether Gellizeau King and/or Stephen Williams has the necessary *locus standi* to pursue this claim on behalf of Florence Nanton's or Keita King's estate?
2. Whether Kassinda Williams as representative of Elste Williams' estate is entitled to a declaration of possessory title?
3. To what relief, if any, is Stephen Williams and/or Gellizeau King entitled?

## **ANALYSIS**

**Issue 1 – Does Stephen Williams and/or Gellizeau King have the necessary *locus standi* to pursue this claim on behalf of Florence Nanton's or Keita King's estate?**

[7] There is no dispute between the parties that Florence Nanton deceased is the registered paper title owner of the subject property. She was related to all the parties. She was Elste Williams' aunt, Stephen Williams' great aunt and Gellizeau King's mother-in-law. It is not is dispute that Keita King and her brother Benjamin are deceased or that their sibling Winston is alive and resides in England.

[8] No evidence was adduced as to whether Florence Nanton died testate or intestate. Mr. Williams at first stated in evidence that he had extracted Letters of Administration to her estate but he later accepted that he had not. Mr. King indicated that Keita King had not made a Will and that he has not extracted probate to her estate. He testified that Benjamin and Winston Nanton transferred their interest to Keita King by word of mouth. He acknowledged that he has seen no documents which effected such transfer. Mr. Williams testified to like effect. Mr. King stated that it was just a matter of 'I give you my share, I give you my share'. It must be noted that a conveyance of an interest in land must be evidenced in writing.<sup>2</sup> It appears that the purported transfer in the instant

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<sup>2</sup> Sections 1 – 4 of the Statute of Frauds, incorporated into the laws of Saint Vincent and the Grenadines pursuant to the Application of English Law Act, Cap. 12 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009. See also section 3 of the Registration of Documents Act, Cap. 132.

case was not so recorded.

[9] Kassinda Williams submitted that Stephen Williams and Gellizeau King:

1. 'filed the Entry of Appearance ... on behalf of Florence Nanton Deceased';
2. stated in paragraph 1 of their claim:- 'Stephen Williams of Sharpes Chateaubelair and Gellizeau King on behalf of Florence Nanton Deceased are the Respondents herein.'

[10] Kassinda Williams contended further that Stephen Williams and Gellizeau King have not produced any evidence to:

1. prove whether Florence Nanton died testate or intestate; and it is presumed that she died intestate;
2. establish whether Florence Nanton's estate has been administered or whether either of them had been appointed as personal representative of her estate; or
3. indicate whether Keita King died testate or whether Gellizeau King has applied for a grant of Letters of Administration in her estate, either in Saint Vincent and the Grenadines or in the United Kingdom.

[11] Ms. Williams contended that, assuming that Florence Nanton died intestate and that her estate has remained unadministered, then section 62 of the Administration of Estates Act<sup>3</sup> would be applicable. She submitted that that section outlines how an intestate's estate is to be administered; identifies the persons who are beneficially entitled share in the estate and outlines the order of priority of entitlement. She submitted further that section 62 (c) provides that where an intestate leaves children, but no spouse, the children are entitled to the entire estate in equal shares. She reasoned that in such eventuality Florence Nanton's children would be the sole beneficiaries of her estate.

[12] Kassinda Williams argued that there has been no evidence as to whether Benjamin Nanton died testate, or whether his estate has been administered. She contended that it is left to be assumed that those estates have remained unadministered. Ms. Williams submitted that on the passing of

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<sup>3</sup> Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Keita and Benjamin, their respective heirs would succeed to their respective interests in Florence Nanton's estate, unless those interests have been otherwise devised by will.

- [13] Ms. Williams argued that section 4 of the Administration of Estates Act provides that real estate which is vested in the estate of a deceased person devolves to his personal representative. She submitted further that pursuant to section 2 of the Administration of Estates Act, the personal representative is only recognized as legally constituted when he or she obtains a grant of Letters of Administration from the Probate Registry of the High Court. She submitted further that Mr. Williams and Mr. King are not the personal representatives of Florence Nanton deceased, and neither is competent to maintain a claim on behalf of her estate until they have obtained such grant of Letters of Administration.
- [14] Stephen Williams and Gellizeau King countered that although the entry of appearance stated that they appear on behalf of Florence Nanton's estate, this was done by mistake. They submitted that section 20 of the Possessory Titles Act<sup>4</sup> ('the Act') states 'No petition, order, affidavit, certificate recording or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity therein, or any mistake not effecting the substantial justice of the proceedings.'
- [15] They argued that the form of their entry of appearance does not affect the substantial justice of the proceedings in any way and does not invalidate their claim. They contended that by claiming to have an interest in the disputed land they have met the legal requirements mandated by section 7 (2) of the Act and they are therefore entitled to file an entry of appearance on their own behalf.
- [16] Kassinda Williams submitted that the oral testimony and the lack of documentary evidence establish that when Stephen Williams and Gellizeau King filed their Entry of Appearance and issued their claim purporting to represent Florence Nanton's Estate, they had no legal authority to do so. She submitted further that an action is a nullity if it is commenced by a claimant purporting to act in a representative capacity, when he or she has no such capacity. She cited the case of **Finnegan v. Cementation Co. Ltd.** in support.

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<sup>4</sup> Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009.

[17] In that case, Jenkins LJ stated:

‘As to the law, ... it seems to me to be settled by *Ingall v. Moran* and *Hilton v. Sutton Steam Laundry* and, ..., by *Burns v. Campbell*, that an action commenced by a plaintiff in a representative capacity which the plaintiff does not in fact possess is a nullity, ... .’<sup>5</sup>

[18] Ms. Williams submitted that in the absence of an extracted Grant of Representation in the Estate of Florence Nanton, neither Stephen Williams nor Gellizeau King was competent to initiate proceedings under sections 7 (2) and 9 (1) of the Act. She contended that Stephen Williams and Gellizeau King failed to make any application pursuant to Part 21 of the Civil Procedures Rules 2000 for an order appointing them to represent the Estate of the late Florence Nanton. She reasoned that they therefore did not have the requisite leave of the Court to commence these proceedings as the representatives of her estate.

[19] She argued further that their failure to adduce any evidence that they had individually or collectively been appointed to act as the personal representatives of Florence Nanton’s estate is fatal to their claim or a successful challenge by them of the instant Application for a Declaration of Possessory Title.

[20] Stephen Williams and Gellizeau King submitted that by paragraphs 7 and 8 of their claim, they asserted an interest in the house situated on the disputed property, by reason of their monetary and physical contributions to the structure. Those paragraphs state:

‘7. On or about the year 1985 Keita King gave permission to Stephen Williams to destroy the wooden house and to construct a concrete dwelling house on the parcel of land. Keita King and her husband contributed moneys to assist the said Stephen Williams in the construction of the house, the first section of the dwelling house which is measured 22 x 24 ft and being two bedrooms, a kitchen, living room and a porch was completed in the year 1995.

8. In 2005 the said Stephen Williams commenced construction of the second Section of the house which entailed planting 6 columns partitioning the downstairs and adding a

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<sup>5</sup> [1953] 1 QB 688 at page 700.

toilet and bath. The said construction was paid for by Stephen Williams, with the financial assistance of his sister Zoe Williams and Keita Kings (sic) husband Mr. Gellizeau King.'

[21] Stephen Williams and Gellizeau King submitted further that Mr. King deposed at paragraph 6 of his affidavit: 'Keita and I gave some money to Stephen to replace the wooden structure with concrete.' They argued that Mr. King is thereby unequivocally stating that he contributed to the house financially and consequently has an equitable interest in it and by extension a beneficial interest in the land. They submitted that Stephen Williams also averred that he made similar contributions to the house at paragraph 5 of his affidavit: '...I started the concrete structure by erecting blocks around the wooden structure. I got the initial funding from my cousin Keita and her husband Mr. Gellizeau King.'

[22] Mr. Williams and Mr. King argued that the evidence of the witnesses in the case establish that Stephen Williams made some contributions to the house that is on the disputed property. They submitted that it is trite law that any interest in a house equates to an interest in the parcel of land on which the house is located.

[23] They contended that even if the court did not find that Mr. King made such monetary contributions to the construction of the house, he is entitled to a beneficial interest in the land, based on his wife's Keita King's interest in her deceased mother's estate. They submitted that Keita King is beneficially entitled to one third of Florence Nanton's estate, pursuant to section 62 (c) of the Administration of Estates Act<sup>6</sup>. This explains Mr. King's testimony that he made no claim in his own right in a personal capacity, but purely on his wife's behalf.

[24] Stephen Williams and Gellizeau King submitted that Keita King died intestate in 2004. Mr. Williams and Mr. King argued that upon her death, she was survived by an adopted son and her husband Mr. Gellizeau King. There is evidence that Keita King adopted one of Elste Williams' sons – Garrett Williams who was raised by and lived with her in England.

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<sup>6</sup> Cap. 486 of the Laws of St. Vincent and the Grenadines, Revised Edition, 2009.

[25] Mr. Williams and Mr. King contended that pursuant to section 62 (b) of the Administration of Estates Act, Keita King's adopted son and widower Gellizeau King became beneficially entitled to her share of Florence Nanton's estate. They contended that it is inconsequential that no Letters of Administration have been extracted in Florence Nanton's or Keita King's estate. They submitted that the court will recognise and give effect to Mr. King's interest as a beneficial owner in Keita King's estate.

[26] They cited in support, the case of **Luella Mitchell (Administratrix of the Estate of Cornelius Jones deceased) and others v Maurice John (Beneficiary of the Estate of Cornelius Jones deceased)**<sup>7</sup>. Stephen Williams and Gellizeau King submitted in the **Luella Mitchell case**, the deceased Cornelius Jones died intestate and was survived by his wife Caroline Jones and two sons Andrew and Carlton Jones. They pointed out that his wife and sons subsequently died without administering his estate. In that case, the Court found that both sons were entitled to 2/3 of the estate in equal shares.

[27] Mr. Williams and Mr. King pointed out that the court held that Carlton's son Maurice John who was born out of wedlock was entitled to a share in his father's estate, pursuant to section 62 of the Administration of Estate's Act. They quoted from the judgment where George-Creque JA opined that Maurice Jones was a beneficial owner of the disputed land, and:

'the fact that his entitlement may have arisen indirectly is of no moment in respect of his beneficial entitlement as a matter of law.'

[28] Mr. Williams and Mr. King contended that based on the facts in the instant case and supported by the authority in **Luella Mitchell v Maurice John**, Gellizeau King is a beneficial owner of the disputed lands and could therefore enter an appearance and oppose the application in his own name, as of right. They argued further that as long as someone claims to have an interest in land, there is nothing prohibiting them from entering an appearance under section 7 (2) of the Act, because their claimed interest in the land is sufficient. They submitted that there is absolutely no

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<sup>7</sup> SVGHCVP2006/016.



requirement that such person has to be the personal representative of the paper title owner's estate. I agree that no such requirement exists.

[29] The foregoing submissions raise a number of sub-issues:-

1. whether Stephen Williams and/or Gellizeau King has lodged a claim or as representatives of Florence Nanton's or Keita King's estate in this matter? and
2. whether Stephen Williams and/or Gellizeau King have filed a claim in their personal capacities?

### **Claim on Florence Nanton's behalf**

[30] The record reflects that Mr. Williams and Mr. King entered an appearance<sup>8</sup> pursuant to section 7 of the Act. They submitted that they made a mistake when they claimed in their pleadings that they appeared on behalf of Florence Nanton's estate. They gave no evidence that this statement was in error. In fact, they prosecuted aspects of their claim on this basis. Notably, this is the only express basis on which they entered the appearance. They maintained this position in their testimony and added that they were seeking to protect their contributions to the construction of the house on the disputed lands. In their claim<sup>9</sup>, they recorded that they made it on behalf of Florence Nanton's estate.

[31] The Act provides that anyone claiming an interest in land which is the subject of an application for a declaration of possessory title, may enter an appearance and file a claim. The relevant provisions are sections 7 (2) and 9 (1) and (2). Section 7 (2) of the Act states:

'(2) A person who claims to have an interest in a piece or parcel of land which the application relates may, within one month from the date of the last publication of the notice under subsection (1), enter an appearance at the Registry.'

It provides simply for the filing entry of appearance by such interested person.

[32] Section 9 (1) and (2) state:

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<sup>8</sup> On 5<sup>th</sup> March 2013.

<sup>9</sup> Filed on 8<sup>th</sup> March 2013.

**'9. Appearance and written claim**

- (1) A person who enters an appearance pursuant to section 7 shall, within twenty-one days from the date of the appearance, file in the Registry a written claim setting out the name of the person who has title to the piece or parcel of land and a statement of the facts on which the claim is founded.
- (2) For the avoidance of doubt, a person may enter an appearance as principal or agent of another person.'

[33] Subsection (1) of section 9 of the Act imposes an obligation on a person claiming an interest in the subject land, to articulate their claim by outlining the facts on which they rely to support their alleged interest. They do this by filing a written claim. They must also name the person in whom title to the land is registered. Subsection (2) makes it clear that such interested person may bring the claim personally in his/her own right or on behalf of another person, in a representative capacity.

[34] Stephen Williams and Gellizeau King elected to enter their appearance and file their written claim 'on behalf of Florence Nanton deceased'. They have both evinced a clear intention to claim an interest in the disputed property on behalf of Florence Nanton's estate. I must decide whether they have the necessary capacity to prosecute such a claim.

[35] But that is not the end of the matter. They included statements in their claim which imply that Gellizeau King is making a claim to a beneficial interest in the disputed property by virtue of his monetary contributions to the subject property. This seemed to be the import of paragraph 7 of the claim. However, he appeared to resile from this posture when he testified.

[36] For his part, Stephen Williams staked a claim to a beneficial interest in the concrete house. In this regard, he and Mr. King asserted at paragraphs 9 and 10 of the claim:

'9. The Applicant was permitted by the said Stephen Williams to reside in the premises with him as who was his mother. At all material times the said Stephen Williams who is the owner of the concrete dwelling house situate on the said parcel of land.

10. It is denied that the Applicant has always treated the disputed land as her own. The

Applicant application if successful will have the unsavoury effect of disenfranchising Stephen Williams from the dwelling house and unjustly enriching the applicant with a house that she made absolutely no contribution to.'

[37] It is established in law that a person may legally represent a deceased person's estate only if he or she has been appointed an executor or administrator of such estate<sup>10</sup>. This is evident from the Administration of Estates Act which defines 'personal representative' as the executor, original or by representation, or administrator for the time being of a deceased person. It is also accepted as the correct legal position and so held in the cases of **Ingall v Moran** and **Finnegan v Cementation Co. Ltd** as submitted by Ms. Williams. Therefore, anyone seeking to bring a claim on behalf of a deceased's estate must either apply for grant of Probate or Letters of Administration or obtain leave of the court<sup>11</sup> to do so.

[38] Neither Mr. Stephen Williams nor Mr. Gellizeau King presented any Probate grant to the court or obtained its leave to proceed with a claim on behalf of Florence Nanton deceased or Keita King deceased. Through their submissions, they appeared to have resiled from the position that they represent Florence Nanton's estate. Their acknowledgment that 'this was done by mistake' although not supported by testimony or other evidence, represents recognition by them that their claim on Florence Nanton's behalf is unfounded and a nullity. For the foregoing reasons I hold that Stephen Williams and Gellizeau King do not have the requisite legal capacity to proceed with the claim on behalf of Florence Nanton's estate. Their claim on this ground is accordingly dismissed.

#### **Claim on behalf of Keita King's estate**

[39] Similar considerations apply in respect of any claim purportedly made on behalf of Keita King's estate. No such express claim was made by Mr. Stephen Williams or Mr. Gellizeau King in their pleadings. Based on the available facts, it would not be legally open to Mr. Williams to serve as the administrator of Keita King's estate. Neither he nor Mr. King has extracted Letters of Administration to her estate. Any purported claim by either of them on behalf of her estate would suffer the same

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<sup>10</sup> Section 2 of the Administration of Estates Act, Cap. 486 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

<sup>11</sup> Pursuant to Civil Procedure Rules ('CPR') 2000, Part 21.

claim as one on behalf of Florence Nanton's estate. I find that neither of them has lodged such a claim and even if they had it would be a nullity for the reasons outlined earlier.

[40] I accept that by operation of law, Keita King would be entitled to a share in her mother Florence Nanton's estate on intestacy. Her surviving spouse Gellizeau King would be one of the beneficiaries of her estate and entitled to share in any interest which might accrue to her (Keita King's) estate on intestacy. Within the context of this case, those matters arise for consideration in relation to Kassinda Williams' claim of adverse possession of the subject property.

[41] In deciding whether her claim is made out, the court must remind itself that based on the presumption of intestacy, Florence Nanton's and Keita King's estates are held on a statutory trust by the Honourable Chief Justice, for the benefit of their heirs, pursuant to the provisions of the Administration of Estates Act<sup>12</sup>. In evaluating Ms. Williams' claim, the court must ask itself whether she has established that she has dispossessed the rightful owner and by extension the statutory trustee, thereby extinguishing their title and claim to the subject property.

[42] This case can be distinguished from the **Luella Mitchell case** on at least two scores. Firstly, Maurice Jones initiated his claim expressly as a beneficiary of the estate of Maurice Jones. Secondly, it was not contested that he had the necessary *locus standi* to prosecute his claim in that capacity. In fact, neither party made submissions on that point before the trial judge<sup>13</sup>.

[43] By contrast, neither Stephen Williams nor Gellizeau King pleaded that either of them made his claim as a beneficiary of Keita King's estate. This was raised for the first time in the submissions. They were duty bound to articulate their claim by their pleadings, to ensure that Kassinda King had full particulars about the claim she was facing<sup>14</sup>. They failed to do so. In this regard, Kassinda Williams was not afforded the opportunity to respond in her defence, to the mandated express assertion to such effect.

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<sup>12</sup> Section 31.

<sup>13</sup> See paragraph 10 of the judgment of the Court of Appeal.

<sup>14</sup> CPR 8.7.

- [44] Section 19 of the Act provides that the provisions of the CPR apply in respect of proceedings under the Act, unless expressly excluded. CPR 8.7 (1) imposes a duty on a claimant to set out in his claim all the facts on which he or she relies. He or she will not be permitted to rely on an assertion which is not captured in the claim which could have been set out there, unless the court gives permission or the parties agree<sup>15</sup>.
- [45] From the pleadings, Mr. Williams and Mr. King alleged that there was an agreement between Keita King and her brothers that the subject land would be devised to her. This suggests that Mr. Williams and Mr. King were claiming that the land belonged to Keita King based on such agreement. They appeared to have abandoned that claim in their submissions. Suffice it to say, that succession law permits the devolution of land from an intestate pursuant to procedures laid down in the Administration of Estates Act, Estate and Succession Duties Act<sup>16</sup>, Regulations and Rules made under them and Probate Rules. Land cannot be passed lawfully or effectively by agreement between heirs in the informal manner described by Mr. Williams and Mr. King.
- [46] They claimed further that Keita and Gellizeau King contributed moneys to assist Mr. Williams with the construction of the first section of the dwelling house on the subject lands. They pleaded that at all material times Stephen Williams is 'the owner of the concrete dwelling house situate on the said parcel of land.' Taken together, those averments signalled that Gellizeau King was claiming no interest in the dwelling house either in his own right or as a beneficiary of Keita King's estate.
- [47] Moreover, an examination of the survey plan depicting the disputed lands (survey plan D4/38) reveals that the concrete house occupies roughly two thirds of the land. The entire area is 3,700 square feet. Of that, one third would amount to 1,233 square feet. In that regard, my first observation is that the dwelling house has become part of the land by operation of law and is indivisible from the land. Secondly, the vacant area is so small as not to amount to a parcel which could possibly support another dwelling house or be the subject of a partition. I am mindful that no expert testimony of this has been adduced.

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<sup>15</sup> CPR 8.7A.

<sup>16</sup> Cap. 490 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[48] In any event, Mr. King is bound by his pleadings. He has made no express claim for any part of the property. The relevant portions of the claim are paragraphs 7, 8, 9 and 10. Paragraphs 7 and 8 have already been reproduced. Paragraphs 9 and 10 state:

‘9. The Applicant was permitted by the said Stephen Williams to reside in the premises with him as she was his mother. At all material times the said Stephen Williams who is the owner of the concrete dwelling house situate on the parcel of land.

10. It is denied that the Applicant has always treated the disputed parcel of land as her own. The Applicants (sic) application if successful will have the unsavoury effect of disenfranchising Stephen Williams from the dwelling house and unjustly enriching the applicant with a house that she made absolutely no contribution to.’

[49] His subsequent testimony and submissions cannot amend his pleadings and transform them into a claim on behalf of Kieta King’s estate. Having regard to the size of the land, it is inconceivable that Mr. King seeks an interest in the vacant part of the land. In view of these considerations, particularly the language of the claim, Gellizeau King has made no express claim on behalf of Keita King’s estate. I find that he has not.

[50] In the case of Stephen Williams, the veiled claim on behalf of Keita King’s estate must fail because the law grants him no interest in her estate. There is also no legal basis on which Gellizeau King can pursue his ‘claim’ on behalf of Keita King’s estate founded in an assertion that the land was devised to her by her siblings. I remain mindful that he has not extracted grant of Letters of Administration or obtained an appropriate order from the court for such purpose. I conclude therefore that he too has no legal capacity to bring a claim on behalf of Keita King’s estate.

### **Claim as beneficiary**

[51] Mr. Williams and Mr. King have outlined factual assertions in their claim, on which Mr. King may hinge a claim as beneficiary of Keita King’s estate. He did not frame his claim expressly as a beneficiary. However, in seeking to do justice among the parties, the court is obliged to recognize and give effect to any legal or equitable claim which arises by the common law, custom or statute

and grant appropriate relief to the parties<sup>17</sup>. Although Mr. King did not expressly claim as beneficiary, if the factual allegations in his pleadings and evidence establish that he is a beneficiary as a matter of law, the court cannot ignore this.

[52] It seems to me that Mr. King has set out certain factual allegations by which he is entitled to assert that he is a beneficiary of Keita King's estate. In this regard, he alluded to the relationship between Florence Nanton and Keita King, the fact of their deaths, presumed intestacy in respect of the former and actual intestacy in the latter case. Those matters will be considered as appropriate.

### **Claim in their personal capacities**

[53] Mr. Williams and Mr. King argued that the evidence of the witnesses in the case establish that Stephen Williams made some contributions to the house that is on the disputed property. They submitted that it is trite law that any interest in a house equates to an interest in the parcel of land on which the house is located. They urged the court to find that they are entitled to file an entry of appearance on their own behalves.

[54] There were a number of procedural irregularities in this matter which might have contributed in some measure to the uncertainties or contentions now being advanced as to the respective capacities in which Mr. Williams and Mr. King brought their claim. In this regard, Mr. Williams and Mr. King did not comply with the applicable Practice Directions ('PD') when they entered an appearance and filed their claim. They did not include in the heading the capacity in which the claim was brought and they did not insert their names in the heading. This is contrary to the stipulations in CPR 3.6 (3) and paragraph 3 of PD1 of 2008.

[55] Mr. Williams' and Mr. King's names were not included in the heading on the defence filed<sup>18</sup> by Ms. Williams. Their names appeared in the heading for the first time in a Notice of Application filed by Kassinda Williams on 12<sup>th</sup> July 2017. Even then, the heading did not reflect whether they were

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<sup>17</sup> Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009 ('the Supreme Court Act'), sections 19 and 20.

<sup>18</sup> On 8<sup>th</sup> April 2013.

appearing in a representative capacity or personal capacity. None of the parties made any application to amend the heading and no order was made to this effect.

[56] However, in her defence, Ms. Williams responded to each allegation made by Mr. Stephen Williams and Mr. Gellizeau King regarding their alleged monetary contributions to the construction of the concrete house on the disputed lands. The parties thereby became locked in a dispute on those facts. They have therefore ventilated issues which require the court to make a finding as to the import of such alleged contributions vis-à-vis their respective entitlement to an interest in the concrete house.

[57] Section 13 of the Act provides:

**‘13. Procedure where more than one person claim ownership**

Where more than one person enter appearances and file claims in opposition to the application and to any respondents, the Court, upon adjudicating on the opposing claims, may make a declaration of possessory title in favour of any of the parties before it as it thinks fit.’ (Underlining added)

[58] The Act does not prescribe a form for the purposes of filing a claim. Having regard to section 19 which incorporates the CPR procedures, it seems to me that the regular claim form prescribed by the CPR would be appropriate. I am not aware that any court has made pronouncements on this and I refrain from making such prescription. I take cognizance of section 20 of the Act which provides that no proceeding under the Act shall be invalid by reason of any informality or technical irregularity in it, not substantially affecting the substantial justice of the case.

[59] I note too that Mr. Williams and Mr. King included no prayer for relief in their claim and made no express claim for a share in the disputed land. Notwithstanding, the circumstances described when taken together, create a scenario in which the court may consider their personal ‘claims’. This is required by section 20 of the Act and sections 19 and 20 of the Supreme Court Act. For those reasons, I consider it just to treat those parts of their claim as one made in their respective personal capacities.



**Issue 2 - Is Kassinda Williams representative of Elste Williams' estate entitled to a declaration of possessory title?**

[60] The Act outlines the legislative framework governing the grant of a declaration of possessory title. Sections 3 and 4 respectively mandate that an applicant makes her application in the prescribed form, include a description of the subject land and provide an estimated value. The applicant must chronicle the facts on which she relies to establish adverse possession. She is also required to say whether any other person claims to be owner or is capable of so claiming; and she must identify the registered owner.

[61] Ms. Williams used the prescribed form, included a full description of the disputed land and estimated the value exclusive of the house, as \$18,500.00. The parties are agreed that the land comprises 3,700 square feet and is depicted on survey plan D4/38. The boundaries which are not in dispute, were described as follows in the application:

‘On the north partly by lands of Samuel Miller and partly by lands of Kesita Williams, on the south partly by lands of Iona Ashton and partly by lands of Elca Edwards, on the east by lands of Woodsley Franklyn and on the west by a road.’

[62] Elste Williams alleged in her application that she lived on the disputed lands with her great aunt Florence Nanton from birth in 1948, continued living there after Florence Nanton died and did so up to the date of her application. She claimed that since Florence Nanton's death on 9<sup>th</sup> March 1974, she treated the property as her own; converted the board structure into a concrete structure; completed two upgrades on the house and facilitated other improvements to it. She alleged that she has paid the taxes in Florence Nanton's name over the years; in 2011 caused her name (Elste Williams) to be entered in the tax roll and has paid the land and house taxes in her name since then.

[63] Ms. Williams relied on these assertions as the factual bases on which she sought a declaration of possessory title. Kassinda Williams and her witnesses provided affidavits and gave oral testimony in which they supplied further details. To this extent the application is compliant with the legal requirements.

[64] Adverse possession is established by proving that the applicant has enjoyed exclusive, continuous and undisturbed factual possession of the subject land and during that period had the requisite intention to possess it as owner.<sup>19</sup> In **Charles v Gittens and Hutchinson**, Floissac C.J. characterized adverse possession as a:

‘... continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse possession or prescriptive possession was as a result of dispossession or discontinuous possession by the proprietor.’<sup>20</sup>

[65] In order to succeed, Kassinda Williams must prove on a balance of probabilities that her mother’s occupation of the disputed property had those features. She submitted that they did. She argued that after Florence Nanton’s death, Elste Williams continued to use the subject property as her home and she raised her children there. She submitted that as the head of her household, Elste Williams was in *de facto* possession of the subject property to the exclusion of other persons, apart from her family members and guests to her home; and that she exercised an appropriate degree of physical control over the subject property.

[66] Mr. Williams and Mr. King countered that their case is that Keita King:

1. gave Elste Williams permission to remain on the land; and
2. authorised Stephen Williams to break down the wooden structure and build a concrete structure.

While Mr. King has always alleged that Keita King authorized and directed Stephen Williams to break down the wooden structure and build a concrete house, the assertion that Keita King gave Elste Williams permission to remain on the land arose for the first time on 6<sup>th</sup> October 2017 when Mr. King filed his affidavit.

[67] There, he deposed that he told Elste Williams that Keita King had told him that she allowed Elste a life interest in the property and she wanted Stephen to get the house after she passed. This was

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<sup>19</sup> Section 2 of the Act. See also *Powell v McFarlane and Another* (1977) 38 P & CR 452 (ChD) at 470 – 471, per Slade J.

<sup>20</sup> SVGHCVAP1991/0006.

not part of his or Stephen Williams' case before then. This assertion runs contrary to the joint averment by Mr. Williams and Mr. King in the claim, that Stephen Williams permitted Elste Williams 'to reside in the premises with him as she was his mother'. It is a deviation from their pleadings. It also contradicts Mr. King's oral testimony that he gave the house to Stephen Williams.

[68] Kassinda Williams would not have had an opportunity to respond to either assertion in her pleadings. It constitutes new material which has the effect of creating a legal ambush. Having regard to the stipulations in CPR 8.7, this departure from the rules cannot be countenanced as it would be prejudicial to Kassinda Williams' case and create an unfair advantage to Stephen Williams and Gellizeau King in circumstances which could have been avoided. They will not be allowed to rely on it and depart from their pleaded claim. It is therefore disregarded.

[69] Kassinda Williams, her siblings Andria Cornelius Williams, Emily Williams, Portia Williams and Patrin Williams provided substantially similar testimony. Stephen Williams, Gellizeau King and their witnesses Calder Williams and Leroy Williams contradicted them in some respects and corroborated them in others.

[70] The parties are agreed that Elste Williams lived on the disputed lands from her childhood and continued to do so with her children including Stephen Williams, after Florence Nanton's death. At first, they lived in the one bedroom wooden house which had belonged to Florence Nanton. Gellizeau King recalled staying there on one occasion when he and Keita King visited from England. He recounted that he slept on a narrow bed in the living room.

[71] In or about 1985, the board house was broken down and some of the materials were used to build a shack on the disputed lands. Construction of a two bedroom concrete dwelling house was undertaken on the former site of Florence Nanton's house. By all accounts, it was completed after about 10 years. A two bedroom addition was later constructed on the lower level in or about 2005. Kassinda Williams and her witnesses asserted that the concrete house was built by Elste Williams. Stephen Williams and Gellizeau King maintained that both sections of the building were built by Mr. Williams with Keita King's permission.

- [72] Kassinda Williams insisted that her mother Elste Williams laboured strenuously to collect sand from Richmond beach, and carry water and other materials to the construction site. She recounted that her mother obtained assistance from the area representative for the ruling political party at one point to buy materials which were used in the project. Mr. Williams agreed that this happened but he testified that the assistance was negligible. Mr. King said he was not aware of this.
- [73] Ms. Williams and her witnesses testified that Elste Williams used to travel to Richmond beach accompanied by her children to 'drogue' sand for use in the construction. Mr. Williams and Mr. King denied knowledge that the children assisted. They insisted that Elste Williams was too sickly to undertake any significant manual labour. Mr. Leroy Williams admitted being aware that Elste and her children would 'drogue' sand from the beach. Mr. Calder Williams recalled that she would 'drogue' gravel from the beach. I accept these accounts of Elste Williams' efforts in this regard.
- [74] Mr. Williams and Mr. King maintained that Elste Williams did not have the means to build the concrete house. They testified that she did not enjoy sustained employment but instead relied on the Kings for her family's livelihood. Kassinda Williams' case was that Elste Williams did many odd jobs including domestic work, smocking, crushing and selling of gravel. Mr. Williams acknowledged under cross-examination that his mother was receiving benefits from the National Insurance Services (NIS). He accepted that this revealed that she would have made satisfactory contributions to the NIS from her employment, since only eligible contributors are entitled to such benefits. I believe that Elste Williams worked at the jobs and other enterprises as described by her children.
- [75] Mr. Williams accepted that Elste Williams helped to bring sand and water during the construction. He and Mr. King indicated that she only assisted with two loads of sand. In view of the overwhelming testimony from her other children, I am inclined to believe that she was relentless in her efforts to get the house completed and worked hard to see this come to fruition. Mr. Williams himself stated that she was tireless and hard-working. He testified that sometimes when he told her to take a break she always wanted to move. I was left with the impression of a determined and independent woman who would stop at nothing in her pursuit to realize her dream of having a proper roof over her head.

- [76] Mr. Williams, Mr. King and their witnesses were insistent that Keita King and her husband financed the construction of the concrete house with contributions from Stephen King. They explained that it took them several years to complete the building because funds were limited. Almost in the same breath Mr. King admitted that when he returned to Saint Vincent around 2006, he built himself a house in Arnos Vale from his own resources without recourse to a loan facility. This belies his claim that financial challenges prevented him and Mrs. King from completing the Chateaubelair house in less than 10 years. It strikes me that he and Keita was not invested in it as a project they were committed to financing. I infer as much.
- [77] Stephen Williams was adamant that he was the sole financier of the second phase of the construction. He and Mr. King testified that he sought and received assistance from Mr. King for the initial outlay. He said that his sister Portia also helped him. Cornelius Williams, another of Kassinda Williams' siblings was equally as adamant that he was the main contributor to the construction of the second phase of the house which included an apartment on the lower level.
- [78] At first Stephen Williams denied that his brother Cornelius made any contributions to the lower level of the house. He eventually conceded that Cornelius tiled the entire downstairs, did some physical labour there including plumbing and carpentry. He also accepted that Cornelius paid for the carpentry aspect of that part of the construction and that he (Stephen Williams) had no idea who paid for the plumbing and tiles.
- [79] I believe Kassinda Williams' and her supportive siblings' testimony as to how the house was constructed. They recounted that it took place over several years and was the substantially result of hard work, commitment, sacrifice and determination by their mother Elste. They accepted that Stephen Williams assisted with the manual work but insisted that he was paid for his efforts.
- [80] Mr. Stephen Williams testified that he occupied the concrete house and holds keys to access it. He indicated that he lives there and maintains a room there. Under cross-examination, he admitted that at some point during and after the construction of the concrete house he lived in the shack on the disputed lands with his girlfriend. He explained that when the first part of the construction was

completed his mother told him that one room was for him and the other was for her. He said he moved into his room. He later testified that he moved into the hut with his then girlfriend and allowed his sisters Kassinda, Portia and Emylyn to have the second bedroom in the house.

[81] Mr. Williams added that since then he has lived in the hut with another girlfriend and their infant son. He stated that he left the property soon after and lived 'between the hut' and one Mr. Gordon. His witness Calder Williams testified that Stephen Williams lived in the board shack for some time and then moved to live by one Mr. Franklyn. He added that Stephen Williams still lives with his girlfriend 'by Mr. Franklyn'. This is a significant and material contradiction of Stephen Williams and Gellizeau King by their own witness. I prefer and accept the version presented by Kassinda Williams, and Calder Williams regarding Stephen Williams' current abode.

[82] Stephen Williams claimed that he has a key to the house and retained a bedroom unit. His siblings denied this. They testified that Stephen Williams has not lived at that property since the wooden house was broken down and he moved to the shack which was built from materials harvested from the wooden house. I believe them.

[83] Mr. King testified that Stephen Williams was given the house after Keita died. He said that he gave him the house but executed no document for this purpose. He accepted that Keita did not execute any document transferring the house to Mr. Williams. Mr. King's purported gift of the house to Mr. Williams is not effective for a number of reasons. Mr. King had no title he could validly convey and a verbal gift of land is ineffective for reasons outlined before.

[84] By his own admission, Mr. King signified that he has no interest in the subject property. His witness Mr. Calder Williams did not provide any useful testimony regarding who authorized the demolition of the wooden house or who paid for the construction of the concrete house. Mr. Leroy Williams said he was present when Keita King gave Stephen Williams permission to carry out the demolition and construction work. He did not elaborate.

[85] Stephen Williams accepted that his mother always treated the property as her own. He added that

he gave her permission to do what the home needed. Keita King's brothers Cheifan and Benjamin lived in England. From all accounts they very rarely came to Saint Vincent.

- [86] I prefer Kassinda Williams and her siblings account over Stephen Williams and Gellizeau King's. Mr. Williams' and Mr. King's account was incoherent and implausible in many respects. In this regard, Stephen Williams' and Gellizeau King's assertions that Keita King and her husband sent monies to him to build a concrete house is difficult to reconcile with their claims that the house belongs to Stephen Williams. This is further compounded by their divergent accounts of how Mr. Williams acquired such interest in the house. On the one hand, Mr. Williams claimed that Keita gave him the house and on the other hand Mr. King said that he gave it to him.
- [87] A nagging question remains unanswered as to why the Kings would invest finances in the house, abandon any claim to it while at the same time Mr. King seeks to retain an interest presumably only in the land. So too is the query as to why Stephen Williams would live elsewhere when he owns a two storey house which he built largely from his own resources. Neither he nor Mr. King provided any explanation for those puzzles. Furthermore, their testimonies were contradictory on material elements of the case. I therefore reject their accounts to the extent that they conflict with Kassinda Williams' claim.
- [88] Further, I reject Stephen Williams' and Gellizeau King's contentions that Elste Williams' occupation of the disputed property was not exclusive; that Stephen Williams had possession of the disputed property from 1985 with Keita King's permission or that he carried out acts that were consistent with having control of the land.
- [89] I am satisfied from the evidence that Elste Williams lived on the subject property all of her life and remained there exclusively, voluntarily, continuously and enjoyed uninterrupted possession of the subject property from 1974 when Florence Nanton passed away to 2015 when she too met her demise. I accept that Elste Williams expended her own resources in constructing a house on the subject property and that she intended to own the land when she did so. I find too that Cornelius

Williams added on a lower level section with some assistance from Stephen Williams in or about 2005.

[90] Mr. Williams and Mr. King contended that Elste Williams occupied the disputed lands with Keita King's consent. They argued too that Elste Williams' acts were not sufficient to exclude Keita King or Stephen Williams whom Keita King allegedly put him in possession of the land. They submitted further that Keita King stayed on the disputed property whenever she was in St. Vincent. There is evidence to this effect, however by itself that does not establish that she gave Elste Williams permission to live there, nor does it amount to her exercising acts of ownership over it, without more.

[91] Mr. Williams and Mr. King argued that section 17 (1) and 'Schedule 1 Paragraph 1' (sic) of the Limitation Act<sup>21</sup> are relevant. They submitted that although Elste Williams occupied the disputed land in excess of 12 years, her possession was not adverse because it was not of an exclusive or undisturbed nature and that she did not have the requisite intention to possess it. That was the extent of their submissions regarding the cited provisions in the Limitation Act.

[92] Section 17 of that Act states:

**'17. Time Limit for actions to recover land**

(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.'

This provision simply sets the timeline for bringing action to recover land at twelve years from the date when the cause of action accrued. The accrual date starts running when the claimant first became entitled to pursue a claim. Where her claim arises through someone else, twelve years is computed from when the action accrued to that other person.

[93] Paragraph 1 of Part 1 of Schedule 1 of the Limitation Act provides:

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<sup>21</sup> Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.



‘1. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.’

This paragraph means that the accrual date for recovery of land is the date on which the claimant (or the person through whom she claims) was dispossessed of the subject land or discontinued his possession of it.

[94] Neither Mr. Williams nor Mr. King led evidence or argued that Florence Nanton or Keita King discontinued possession of the subject land or was dispossessed of it. The provisions they have relied on are therefore not helpful.

[95] Mr. Williams and Mr. King both asserted that the person entitled to possession (Florence Nanton or alternatively Keita King) is deceased. Paragraph 2 of Part 1 of Schedule 1 of the Limitation Act addresses such matters. It provides:

‘2. Where the person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person-

(a) was on the date of his death in possession of the land ...; and

(b) was the last person entitled to the land to be in possession of it,

the right of action shall be treated as having accrued on the date of his death.’

[96] Based on the factual assertions in this case, this provision describes the scenario relative to Florence Nanton but not with respect to Keita King. This is because the land was registered in Florence Nanton’s name and she was in possession of it at the time of her death. Keita King was never registered as the owner of the land and she was never legally in possession of it. In those circumstances, a cause of action for recovery of the land (or any interest in it which arose through intestacy) accrued when Florence Nanton passed away on 9<sup>th</sup> March 1974.

[97] Strictly speaking, neither Mr. Williams nor Mr. King has filed a claim for recovery of land. Rather,

they seek legal and/or beneficial (equitable) interests in the disputed land. Those qualify for consideration as an action for recovery of land and will be treated accordingly.

[98] Section 19 of the Limitation Act is relevant. It provides:

**‘19. Extinction of title to land after expiration of time limit**

Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land ... the title of that person to the land shall be extinguished.’

In other words, where a person goes into possession of land belonging to someone else, if the owner does not take action to recover possession of the land within the twelve year limitation period, his title will be extinguished.

[99] Ms. Williams submitted that Elste Williams was permitted by her aunt Florence Nanton to reside at the subject property. She contended that the licence was determined on Florence Nanton’s death. She cited in support the case of **Andre Winter et al v Charles Richardson**<sup>22</sup>. Mr. Williams and Mr. King do not dispute that Elste Williams was a licensee of Florence Nanton’s. They submitted that it was renewed by Keita King even though it was determined by Ms. Nanton’s death. There is no reliable evidence that this took place. I find that Elste William’s licence was determined on Florence Nanton’s death.

[100] Ms. Williams made no submissions regarding how her application might be affected by the provisions of the Limitation Act or section 31 of the Administration of Estates Act. Mr. Williams and Mr. King made no submissions in respect of the latter.

[101] In view of the earlier paragraphs which highlighted the scenario by which a statutory trust is created under the Administration of Estates Act, it is appropriate to examine any related provisions under the Limitation Act. It must be noted that Ms. Williams did not plead any provision of the Limitation Act. The Court was not invited to give effect to those sections which would have afforded Ms. Williams a defence that Mr. Williams’ or Mr. King’s claim is statute-barred. The Court will evaluate

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<sup>22</sup> ANUHCVP2006/0025.

whether the 'statutory trust' provisions under the Limitation Act provide protections to the beneficiaries of Florence Nanton and/or Keita King's estate from having their beneficial interests in the subject property extinguished.

### **Statutory trust for sale – Honourable Chief Justice as trustee**

[102] Section 20 of the Limitation Act provides that the date of accrual of a right of action to recover equitable interests in land is 12 years, except where the beneficiary brings an action for fraudulent breach of trust against a trustee, in which case the limitation period is 6 years<sup>23</sup>. The Limitation Act and legal precedents create no exception in respect of a statutory trust for sale over which the Honourable Chief Justice is the trustee. Therefore, any title held by the Honourable Chief Justice will expire and be extinguished 12 years after the accrual date, in accordance with sections 17 and 20 of the Limitation Act<sup>24</sup>.

### **Express or constructive trustee – Elste Williams**

[103] By occupying the disputed property after Florence Nanton's death, Elste Williams became an *executor de son tort* in that the estate remained unadministered for the rest of Elste William's life – a period of 41 years. An *executor de son tort* is a person who, without legal authority assumes control of a deceased person's property as if she were the executor or administratrix. Keita King was alive for 30 of those 41 years and reportedly took no steps to administer her mother's estate. Neither did her brothers. Winston Nanton who is reportedly still alive has presumably not applied for grant of Letters of Administration to his mother's estate.

[104] Their failure to do so suggests a certain amount of indifference especially since they have visited Saint Vincent and the Grenadines after their mother's demise and would have had constructive or actual notice that Elste Williams was in possession of the disputed lands. Their inaction in those circumstances leads one to the conclusion that they had no interest in pursuing any claim to the disputed property.

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<sup>23</sup> In accordance with section 23 of the Limitation Act.

<sup>24</sup> *Martin v Myers* [2004] EWHC 1947 (Ch).

- [105] The law is that an *executor de son tort* (unlike an executor) is not considered to be in possession of the intestate's property as trustee for the purposes of the Limitation Act<sup>25</sup>. Such a person may therefore acquire title to land by adverse possession, unless the particular circumstances of the case constitutes him a constructive or express trustee. In light of the circumstances in this case, I make no finding that Elste Williams or Kassinda Williams became a constructive or express trustee for any beneficiary of Florence Nanton's or Keita King's estate. There was therefore no legal impediment to Elste Williams acquiring title to the subject property by adverse possession.
- [106] Mr. Williams and Mr. King submitted that it is a settled principle of law that if someone is in possession of land with the owner's permission, such possession would not be adverse. They cited the decision in **Ulric Miguel v Natalie Miguel, Jason Sardine, Noel Sardine and Magdaline Sardine**<sup>26</sup>. They submitted that the court held in that case that co-beneficiaries of an intestate's estate can lawfully grant permission to another co-beneficiary to occupy the premises. This is indeed established in law.
- [107] Unlike that case, it is being contended in the case at bar that one co-beneficiary of the intestate's estate assumed full control of the estate, in circumstances which is not supported by credible evidence. In this context, I do not accept Mr. Williams' and Mr. King's assertions that Keita King was given the disputed lands by her brothers or that she gave permission to Elste Williams to live there.
- [108] I accept the overwhelming evidence of Kassinda Williams and her witnesses that Elste Williams always intended to own the subject lands. I find that Elste Williams enjoyed exclusive, undisturbed possession of the disputed lands for a period in excess of 12 years from 1974 through January 2013 when she filed her application for a declaration of possessory title. Her possession of the subject lands would extinguish the title of the paper title owner Florence Nanton and any claims that Keita King, Cheifan Nanton, Benjamin Nanton or their respective estates might have had to a beneficial interest in the same.

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<sup>25</sup> Halsbury's Laws of England Volume 103 (2016), para. 1267 (Lexis Nexis online edition).

<sup>26</sup> SVGHACV2012/0018.

[109] Ms. Williams filed a valuation report as required by law<sup>27</sup>. However, the report did not include an estimated value of the house on the property. Those particulars are required for stamp duty purposes<sup>28</sup>. Ms. Williams also complied with the other procedural and documentary requirements including publishing notices of her application in successive issues of newspapers circulating in Saint Vincent and the Grenadines, at the relevant Magistrate's Court and the Registry of the High Court; and serving notice of her application on adjoining land owners.

[110] In view of the foregoing, I am satisfied that Elste Williams is entitled to a declaration of possessory title of the subject property. It is declared that Elste Williams is the true owner of the disputed lands at Chateaubelair by virtue of her adverse possession. Stephen Williams' and Gellizeau King's claims to a beneficial interest in the deceased persons' estates are dismissed.

**Issue 3 - To what relief if any, is Stephen Williams and/or Gellizeau King entitled?**

[111] Stephen Williams and Gellizeau King implied in their submissions that they are entitled to recover the value of their contributions to the construction of the house which sits on the subject lands. Mr. King contended that he should also recover Keita King's monetary contributions. Their submissions seemed to propose that Elste Williams' application for a declaration of possessory title should be dismissed by virtue that they are claiming an interest in the disputed lands including the house. They included no claim for a monetary award to reflect those contributions.

[112] All of the witnesses testified that Stephen Williams physically constructed most of the concrete structure. For her part, Portia Williams admitted that Stephen provided \$700.00 towards the building on one occasion. Another sister, Emylyn recalled that Stephen gave his mother \$500.00 to purchase galvanize. Most of the witnesses testified that Portia Williams made a significant contribution to the building of the lower level. They also stated that Stephen Williams was paid by his sister Portia to do the work on the house. He denied this and claimed that Portia sent the money to his mother to buy materials for the addition and that he was not paid any remuneration.

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<sup>27</sup> Sections 4, 5, 6, 7 and 8 of the Act.

<sup>28</sup> Pursuant to section 31 of the Act.

[113] Gellizeau King testified that he and Keita contributed substantially to the concrete structure. He recounted one incident when he visited Saint Vincent and gave Elste Williams \$1000.00 to assist with the purchase of windows. Emylyn and her siblings recalled that instead Elste gave her the money to buy school supplies for her children. Notably, this is the sole distinct recollection Mr. Gellizeau mentioned about the amount of money he contributed towards the construction of the concrete house. This is remarkable.

[114] It was accepted by Kassinda Williams and her witnesses that Keita King was very helpful to the family and sent them items from England from time to time. I have no doubt that she would have provided financial assistance to her cousin Elste on occasions. The evidence does not support the assertion that she made substantial or any contributions towards the building.

### **Allegation of Unjust Enrichment**

[115] In their claim, Mr. Williams and Mr. King asserted that if Ms. Williams' application is successful it 'will have the unsavoury effect of disenfranchising Stephen Williams from the dwelling house and unjustly enriching the Applicant with a house that she made absolutely no contribution to'. Ms. Williams submitted that a claim for unjust enrichment is one which should be brought in a claimant's personal capacity. She submitted further that under cross-examination Mr. Williams indicated that he was acting on behalf of Florence Nanton's estate and brought his claim to protect those interests.

[116] Ms. Williams argued that Mr. Williams and Mr. King did not issue their Claim in Opposition in their respective personal capacities, and consequently should not be permitted to pursue a cause of action for unjust enrichment. She submitted that even if the Court rules that it is permissible for them to pursue, they have produced no documentary evidence to substantiate their claims that they either individually or collectively made financial contributions to the construction of the concrete dwelling house. She argued that they have both failed to specify the exact amount allegedly spent on the building or an estimate of what was allegedly contributed; and have given no indication of the materials either of them allegedly purchased for the construction.

[117] I agree that Mr. Williams and Mr. King have supplied no documentary evidence and were scant on the specifics of their contributions to the construction. The weight of the evidence is against their assertions that they made any substantial contributions to the construction of the concrete structure. I find that Mr. King made none. While I accept that Stephen Williams helped his mother as it seems all of his other employed siblings appeared to have done, I do not believe that he made any extraordinary or significant contributions which would create for him a beneficial interest in the concrete house. I find that he did not. In light of the evidence, his contributions in my opinion were mostly gratuitous and partially compensated by Portia Williams. Mr. Williams' and Mr. King's claim relative to such contributions are accordingly dismissed.

[118] Kassinda Williams has prevailed in this matter. She is entitled to recover prescribed costs from Stephen Williams and Gellizeau King pursuant to CPR 65.5 (2) (b).

### **ORDER**

[119] It is accordingly ordered and declared:

1. Neither Stephen Williams nor Gellizeau King had the *locus standi* to bring this claim on behalf of Florence Nanton's or Keita King's estate.
2. Kassinda Williams' application on behalf of the estate of Elste Elaine Williams, for a declaration of possessory title of property situated at Chateaubelair in the Parish of Saint David in the State of Saint Vincent and the Grenadines, delineated and described in survey plan D4/38, approved and lodged at the Lands and Survey Department on September 12<sup>th</sup>, 2011 by Chief Surveyor Adolphus Ollivierre, is granted.
3. Kassinda Williams in her capacity as legal representative of Elste Elaine Williams' estate is the true owner of all that piece or parcel of land situate at Chateaubelair in the Parish of Saint David, in the State of Saint Vincent and the Grenadines, comprising approximately three thousand seven hundred square feet (3,700 sq. ft.) with appurtenances thereon; more particularly described and delineated in survey

plan D4/38 approved and lodged at the Lands and Survey Department on September 12<sup>th</sup>, 2011 by Chief Surveyor Adolphus Ollivierre, bounded as follows:

On the north partly by lands of Samuel Miller and partly by lands of Kesita Williams, on the south partly by lands of Iona Ashton and partly by lands of Elca Edwards, on the east by lands of Woodsley Franklyn and on the west by a road as shown on the plan drawn by Benson Quamina licensed land surveyor.

4. Kassinda Williams shall file at the Court office on or before 27<sup>th</sup> March 2019, a valuation of the subject property prepared by a registered and qualified land valuator, such valuation to include a current value of the building erected on it.
5. Kassinda Williams shall pay the applicable stamp duty pursuant to the Possessory Titles Act, based on the value ascribed in the valuation report filed in accordance with paragraph 4 of this order.
6. Stephen Williams' claim is dismissed.
7. Gellizeau King's claim is dismissed.
8. Stephen Williams and Gellizeau King shall pay to Kassinda Williams (legal representative of Elste Elaine Williams' estate) prescribed costs of \$7,500.00 pursuant to CPR 65.5 (2) (b).

[120] I am grateful to counsel for their written submissions.

**Esco L. Henry**  
**HIGH COURT JUDGE**

By the Court

Registrar