EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2017/0050

BETWEEN:

FERDINAND JAMES

Appellant

and

[1] PLANVIRON (CARIBBEAN PRACTICE) LIMITED
[2] RODNEY BAY MARINA LIMITED

Respondents

Before:

The Hon. Dame Janice M. Pereira DBE	Chief Justice
The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mr. Andie George and Ms. Sherene Francis for the Appellant
Mr. Geoffrey DuBoulay and Mrs. Sardia Cenac-Prospere for the Respondents

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2018: May 17;
2019: October 16.

Civil Appeal – Civil Code of Saint Lucia – Article 2103A – Supreme Court Prescription by Thirty Years (Declaration of Title) Rules – Land Registration Act – Title to immovables by positive prescription – Jurisdiction to determine claims for prescriptive title to registered land – Whether the Court's jurisdiction under article 2103A has been impliedly repealed by the Land Registration Act – Whether the Supreme Court Prescription by Thirty Years(Declaration of Title) Rules were impliedly repealed by the Land Registration Act

On 7th September 2009, the appellant, Ferdinand James, filed a petition pursuant to article 2103A of the Civil Code of Saint Lucia ("the Civil Code") and the Supreme Court Prescription by Thirty Years (Declaration of Title) Rules ("the Prescription Rules"), claiming that he had acquired title by prescription to 7,000 square feet of land owned by the first

respondent, Planviron (Caribbean Practice) Limited. On 31st January 2011, the High Court issued a declaration of title ("the Prescription Order") naming Mr. James the owner of the land. Following this, the respondents, Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited, applied to set the Prescription Order aside on several grounds. By the consent of the parties, the set-aside application was overtaken by an application for summary judgment, made on the basis that Mr. James' claim for title by prescription was wrongly made in accordance with the Prescription Rules which had been impliedly repealed by the Land Registration Act ("the LRA" or "the Act"). The application for summary judgment was heard by Smith J who entered summary judgment in favour of the respondents, found that part 9 of the LRA had impliedly repealed the Prescription Rules, and declared the Prescription Order to be null, void and of no effect.

Mr. James appealed, the issue for determination before the Court of Appeal being whether part 9 of the LRA impliedly repealed article 2103A of the Civil Code and/or the Prescription Rules.

Held (per Pereira CJ and Webster JA [Ag.]), dismissing the appeal with costs to the respondents to be assessed unless agreed within 21 days, that:

1. The registered land system, operated under the LRA, replaced the previous system whereby title to land was conferred by deed and subsequently registered by volume and folio (the "title by deed system"). There is simply no system of land ownership in Saint Lucia existing outside the registered land system under the LRA, in respect of which a declaration of title may effectively vest title. Accordingly, it is not open to any person to ignore the plain language and express provisions of the LRA and to continue to use the procedure under the Civil Code and the Prescription Rules, when the LRA does not provide for it and, instead, expressly provides its own procedure or gateway for obtaining title by prescription.

2. Sections 104 and 105 of the LRA expressly vest the High Court with an advisory and an appellate jurisdiction over decisions of the registrar to rectify or refuse to rectify the register on the basis of a prescription claim. It would be incongruous were the court, on declaring title pursuant to article 2103A and the Prescription Rules, to have a person aggrieved by the act of rectification by the registrar, return to the same High Court (which issued the declaration in the first place) for determination of that grievance by way of an advisory opinion or appeal. This circularity is within the realm of a repugnance which does not permit the reposeful existence between the two procedures, and is an indication that the procedure under the Prescription Rules was intended by Parliament to cease to be an effectual mode of obtaining prescriptive title.

   Article 2103A of the **Civil Code of Saint Lucia** Cap 4.01, Revised Laws of Saint Lucia 2015 considered; Sections 104 and 105 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered.

3. In all the circumstances, it is not reasonably possible to construe the procedures under the Prescription Rules and the LRA in a manner that gives sensible effect to

both. In any event, even if one were to take a contrary view, there is the ineluctable conclusion that the court's jurisdiction under article 2103A has been rendered redundant and therefore, an exercise in futility, as the registrar is not obliged to accept a declaration of title issued by the court, without more. Neither is the registrar relieved, in any way, of the duty to, himself, be satisfied that the claim for title by prescription has been made out.

Halsbury's Laws of England (4th Edn., 1973), Vol. 44 paras 966 and 969 considered; article 2103A of **the Civil Code of Saint Lucia** Cap 4.01, Revised Laws of Saint Lucia 2015 considered; sections 97, 98, 104 and 105 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered; **William Quinto and anor v Santiago Castillo Limited** [2009] UKPC 15 considered**; Sylvina Louisien v Joachim Rodney Jacob** [2009] UKPC 3 considered; **Loopsome Portland el al v Sidonia Joseph** Saint Lucia Civ. App No.2 of 1992 (delivered 25th January 1993, unreported) considered.

4. The LRA vests the registrar with judicial and quasi-judicial powers, including the power to determine when an instrument should be registered, and when an instrument should not be registered. While it is true that the earlier findings herein have the effect of ousting the High Court's original jurisdiction to determine prescription claims, the court retains an advisory and appellate jurisdiction over decisions of the registrar on prescription claims under section 94. Quite apart from the court's powers under section 98 (which speaks to court-ordered rectification), section 115 of the LRA expressly retains the court's jurisdiction in respect of civil suits and proceedings related to the ownership of land. Such a civil suit can result in a rectification of the land register where a fraud or a mistake has been made out either in respect of a first registration or a subsequent registration. The court's jurisdiction therefore has not been completely ousted in prescription claims.

   E. A. Francis: The Law and Practice Relating to Torrens Title in Australasia: Volume 1 (1972) Butterworth & Co. (Australia) Ltd at p.46 considered; sections 98 and 115 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered; **Skelton v Skelton** (1986) 37 WIR 177 considered; **Webster v Fleming** Anguilla Civil Appeal No 6 of 1993, (delivered 8th May 1995, unreported) considered; **Sylvina Louisien v Joachim Rodney Jacob** [2009] UKPC 3 considered.

5. Section 80 deals with the registration of ownership in land by way of transmission and has nothing to do with rectification of the land register. It simply permits registration, where the land in question has passed from a registered owner to a subsequent owner by operation of law on death or insolvency or otherwise. A registration by virtue of a transmission is not in play here. In any event, there is no provision in the LRA which permits the registrar to rectify the land register on the basis of a transmission.

Section 80 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 interpreted; **George v Guye** DOMHCVAP 2012/0013 (delivered 12th June 2017, unreported) applied.

6. The 1987 amendment to section 3 of the LRA did not have the effect of allowing the procedure provided in the Civil Code and the Prescription Rules to continue to apply alongside the provisions of the LRA. Firstly, any petition filed in accordance with the Prescription Rules would necessarily be in respect of land registered under the LRA, which is the legislation that exclusively applies to all land, interests in land or dealings in registered land. In any event, the original section 3 is couched in strikingly mandatory terms which would have had the effect of repealing the court's jurisdiction under article 2103A and the accompanying Prescription Rules. The original section 3 is strong evidence that the court's jurisdiction was not intended to survive the implementation of the registered land system.

   Section 3 of **the Land Registration Act** Act No.12 of 1984 considered; section 3 of the **Land Registration Act** Cap 5.01, of the Revised Laws of Saint Lucia 2015 considered.

7. The Court must give effect to the clear and unambiguous will of a sovereign parliament, that jurisdiction to determine claims for prescriptive title to land in Saint Lucia vests in the registrar. There is no legal principle that enables the court to ignore the law when an issue arises for determination, because persons have chosen to ignore it for several years. It is however the function of the court to decide what the law is on an issue raised before it. As such, a complaint that the judge did not consider the effect of his judgment on previous declarations, therefore, takes the appeal no further.

   Beverley Levy v Ken Sales and Marketing Ltd [2008] UKPC 6 considered; section 19 of the **Eastern Caribbean Supreme Court Act** Cap 2.01, Revised Laws of Saint Lucia 2015 considered; **Spiricor of St Lucia Ltd v Attorney-General of St Lucia and Another** (1997) 55 WIR 123 considered.

Per Michel JA (dissenting):

1. Article 2103A of the Civil Code is the legislative provision which gave the court jurisdiction to issue the Prescription Order in January 2011. In so far as the declaration of title was issued pursuant to the court's jurisdiction under article 2103A and not the Prescription Rules, the learned judge erred when he purported to set aside the order on the basis that the Prescription Rules were repealed. In any event, the Prescription Rules are merely procedural rules that set out the manner in which an application for title to land by prescription under article 2103A of the Civil Code should be made. A finding that the Rules had been impliedly repealed has no real impact therefore on the jurisdiction of the High Court to issue a declaration of title. The order of the learned judge setting aside the Prescription Order was therefore made on a wrong foundation and must be set aside as there was no application or declaration for prescriptive title under the Prescription Rules,

and accordingly no basis for the finding that the Prescription Rules and the Land Registration Act are inconsistent.

Article 2103A of the **Civil Code of Saint Lucia** Cap 4.01, Revised Laws of Saint Lucia 2015, considered; rule 4 of the **Supreme Court Prescription by Thirty Years (Declaration of Title) Rules** S.I. No. 7 of 1970 considered.

2. There is a very strong presumption against implied repeal in circumstances where: (i) the allegedly conflicting pieces of legislation have coexisted without difficulty for a long period of time; (ii) the legislation said to have been impliedly repealed is a very "weighty" enactment, like the Civil Code of Saint Lucia; (iii) the consequence of an implied repeal would be to oust the original jurisdiction of the Supreme Court; and where (iv) the consequence of an implied repeal would be to nullify several declarations issued by the court within the last thirty-four years. The Land Registration Act was never intended to oust the jurisdiction of the Supreme Court to adjudicate upon disputes as to title to land. On the contrary, parliament sought to ensure that the Act would be minimally disruptive to the existing land law of Saint Lucia contained in the Civil Code. In the absence of a clear indication that article 2103A and the Land Registration Act were not intended to coexist, there is no basis on which to find that article 2103A has been impliedly repealed or that the presumption against implied repeal in this case has been rebutted.

   West Ham Churchwardens and Overseers v Fourth City Mutual Building Society [1982] 1 QB 654 applied; **Henry Boot Construction (UK) Ltd. v Malmaison Hotel (Manchester) Ltd.** [2001] QB 388 applied; **BH (AP) v The Lord Advocate** [2012] UKSC 24 applied; section 115 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered; **Land Adjudication Act** Cap 5.06, Revised Laws of Saint Lucia 2015 considered; **Land Surveyors' Act** Cap 5.07, Revised Laws of Saint Lucia 2015 considered.

3. The Civil Code is more than just a statute which prescribes or proscribes some action or course of action. It is a code setting out an entire body of laws covering a significant portion of what constitutes the law or laws of Saint Lucia. One does not simply jettison long-standing and frequently-used provisions in the Civil Code because ordinary legislation subsequently enacted appears to be inconsistent with the codal provisions. This is of even greater moment when the jurisdiction that is taken to be impliedly curtailed is the very fountain of jurisdiction of our legal system – the Supreme Court.

4. Section 94 provides a route by which a person may apply to the registrar of lands for prescriptive title but does not exclude the jurisdiction of the High Court under article 2103A to determine whether a person has acquired prescriptive title. There is therefore no necessary or unresolvable inconsistency, or repugnancy, arising from the possibility of there being an application before the registrar for the grant of prescriptive title, and an application to the High Court for the grant of a declaration of title with regard to the same portion of land. If this in fact occurs, the

court may stay its own proceedings pending adjudication by the registrar, or may order a stay of the proceedings by the registrar pending adjudication by the court.

5. Section 97 of the Act gives power to the registrar of lands to rectify the land register in the circumstances mentioned in the section. This cannot be taken to mean that the registrar may not otherwise rectify the land register and, in particular, that he or she cannot do so if directed by order of a competent court.

   Sections 97 and 115 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered.

6. Section 96 of the Act gives the registrar of lands the same authority to receive and approve applications for servitudes over land as do sections 94 and 95 with respect to applications for ownership of land by prescription. Any finding that the registrar is the sole authority empowered to receive and adjudicate applications for ownership of land by prescription must also mean that the power of the Supreme Court to determine that a person has acquired a right of way or some other easement over land is extinguished by section 96. Furthermore, if it is to be taken that declarations of title issued under article 2103A are now futile, the same reasoning may be applied to deeds of sale, deeds of donation, mortgages, and all other forms of transfer of registered land, which have been and continue to be the modes of conveyance of registered land in Saint Lucia. This reinforces the view that article 2103A of the Civil Code and section 94 of the Act are not inconsistent with or repugnant to each other, and that, if it was the will of parliament that prescriptive title be removed altogether from the jurisdiction of the Court and placed exclusively in the domain of a civil servant, then parliament's intention would have been legislatively expressed and not judicially implied.

   Sections 94, 95 and 96 of the **Land Registration Act** Cap 5.01, Revised Laws of Saint Lucia 2015 considered.

7. **Spiricor of St. Lucia Limited v Attorney-General of St. Lucia and Another** concerned an obvious conflict between articles 957 and 1382 of the Civil Code and sections 23, 26, 37(1) and 56 of the Land Registration Act (which are at the heart of the land registration system). The nature of the conflict in **Spiricor** does not arise in this case. In any event, it is hardly conceivable that a conflict bearing on the jurisdiction of the Supreme Court to adjudicate disputes relating to land ownership could have escaped the notice of the drafters, through whose words the intention of parliament is expressed.

   Spiricor of St Lucia Limited v the Attorney-General of St Lucia and Another (1997) 55 WIR 123 distinguished.

JUDGMENT

[1] **PEREIRA CJ:** I have recently had the benefit of reading the judgment of my learned brother, Michel JA in draft. While I agree with the stated principles on implied repeal, regrettably, I am unable to agree with the conclusions to which he has reached and his proposed disposition of the appeal.

[2] This appeal raises the singular issue of whether the mode for obtaining title to immovables (land), by way of a petition to the High Court made in accordance with the procedure laid down for so doing by the **Supreme Court – Prescription by Thirty Years (Declaration of Title) Rules**[1] ("the Prescription Rules" or "the Rules"), can coexist with the later **Land Registration Act**[2] ("the LRA") which sets out a different procedure for obtaining title by prescription.

[3] The learned judge (Godfrey Smith J) in the court below, upon an application for summary judgment made by the respondents (who together will be called "Planviron"), concluded that part 9 of the LRA, which expressly deals with the acquisition of title to land by prescription, impliedly repealed the Prescription Rules. He thereupon set aside the order of the judge ("the first judge'') dated 31st January 2011, by which the first judge granted a declaration in favour of the petitioner ("Mr. James") in the following terms:

> "THIS COURT DECLARES that pursuant to Article 2103A of the Civil Code, Cap 4:01 of the Revised Laws of St. Lucia 2001, The Petitioner Mr. Ferdinand James is the owner of 7000 sq. ft of land to be dismembered from Block 1255B Parcel No.743 in accordance with the Sketch Plan of Dunstan Joseph exhibited to the Petition."

The first judge ordered that: 'The Registrar of Lands is to rectify the Land Register for Block 1255B Parcel No.743 to record the said Ferdinand James as being the proprietor of 7000 sq. ft. to be dismembered therefrom in accordance with the Sketch Plan of Dunstan Joseph'. I will refer to this order as "the Prescription Order".

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[1] S.I. 7 of 1970.
[2] Cap. 5.01, Revised Laws of Saint Lucia 2015.

Background

[4] The background can be succinctly set out as the matters giving rise to the issue are not in dispute. Mr. James, on 7th September 2009, filed a petition pursuant to the Prescription Rules seeking a declaration of title to 7,000 square feet of immovable property forming part of parcel 743 block 1255B, in the registration quarter of Gros Islet. Interestingly, paragraph 7 of the petition stated that the second respondent (Rodney Bay Marina Limited) is the registered owner of parcel 743 and of the adjoining land. However, the first respondent was recorded on the land register as the registered proprietor with absolute title of parcel 743, and had been so registered since 29th December 2003. On 31st January 2011, the first judge made the Prescription Order. On 19th May 2011, Planviron applied to set the Prescription Order aside on various grounds ranging from lack of service on Planviron and disputing Mr. James' claim that he had prescribed any portion of parcel 743, to contending that the proceedings he brought by way of petition were instituted in accordance with the Prescriptions Rules, which had been impliedly repealed by the LRA. That set-aside application was not determined on its merits. It appears that, by agreement of the parties, the set-aside application was overtaken by an application for summary judgment addressing solely the issue of implied repeal raised on the set-aside application as a discrete point of law. That application for summary judgment was heard by Smith J. He gave summary judgment in favour of Planviron and, as stated earlier, concluded that part 9 of the LRA had impliedly repealed the Prescription Rules, and declared the Prescription Order made by the first judge to be null, void and of no effect. Mr. James appealed.

The Appeal

[5] Mr. James relies on three main grounds of appeal. Notably, neither Mr. James nor Planviron took issue, here or in the court below, with the propriety of the learned judge's orders as a judge of coordinate jurisdiction. The issue presented in this appeal, rather, is encapsulated in the singular question – whether the learned judge was correct in holding that part 9 of the LRA impliedly repealed the Prescription Rules. A corollary of that main question, as posited by Mr. James, is whether the learned judge, in holding that the LRA had impliedly repealed the Prescription Rules, failed to have sufficient regard to the legal

position of persons who have obtained prescriptive title under the **Civil Code of Saint Lucia**[3] ("the Civil Code") and the Prescription Rules after the LRA came into effect in 1984.

The Civil Code

[6] A useful starting point for addressing this issue is the prescription provisions of the Civil Code. The Civil Code, which is of some vintage, dating as far back as 1879, sets out various prescription periods dealing with many matters – from contracts to delicts. It also sets out in article 2103 what may be termed a 'default prescription period' of thirty years which applies to all things, rights and actions not otherwise regulated by law. In 1956, article 2103A was added in the following terms:

> "Title to immovable property… may be acquired by sole and undisturbed possession for thirty years <u>if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property… upon application in the manner prescribed by any statute or rules of court</u>". (Underlining supplied)

[7] The Prescription Rules, which were brought into effect on 14th March 1970, put in place the procedure for applying to the court for a declaration of title pursuant to article 2103A of the Civil Code. Rule 4 is headed 'Application for Declaration of Title' and states that an application for a declaration of title to immovable property under article 2103A of the Civil Code is to 'be made by petition to the Court'.

[8] Rule 5 of the Prescription Rules prescribes the content of the petition and states that it shall be in Form 1 of the schedule to the Rules. Paragraph 7 of Form 1 speaks of land being registered in 'Vol … No … in the name of…'. This clearly speaks to a time when title to land was evidenced by deed (or other documents), prior to the Land Registration and Titling Project (the "LRTP") which saw to the fulsome implementation of the registered land system in Saint Lucia.

[3] Cap. 4.01, Revised Laws of Saint Lucia 2015.

The registered land system in Saint Lucia

[9] The LRA and the LRTP signalled the adoption of the Torrens system of land registration in place of the existing 'title by deed' system. The LRTP took place in the early 1980s when all lands in Saint Lucia were surveyed and adjudicated upon under the **Land Adjudication Act**[4] (the "LAA"). The LAA was the companion interlocking legislation in the LRTP process which brought all lands, upon adjudication pursuant to the LAA, under the registered land regime established by the LRA. I do not propose to examine in detail the process by which the registered land system in Saint Lucia was implemented through the combined effect of the LRA, the LAA and the work of the LRTP. This was previously done by both the Privy Council in **Sylvina Louisien v Joachim Rodney Jacob**[5] and by this Court in **Joseph and others v Francois and Matty and others v Francois**.[6] In the circumstances, it suffices to quote brief passages from **Louisien** and **Matty** which are indicative of the views that both courts have taken of the implementation of the registered land system in Saint Lucia. The Privy Council in **Louisien** stated that:

> "In the early 1980s St Lucia decided to adopt the Torrens system of registration of title to land. … To give effect to this decision two statutes were enacted in 1984, the Land Adjudication Act, Act 11 of 1984, now cap. 5.06 in the Revised Edition of the Laws of St Lucia ('the LAA') and the Land Registration Act, Act 12 of 1984, now cap. 5.01 ('the LRA')."

The Privy Council at paragraph 4 also stated that 'the LRA… was a substantial enactment (extending to 119 sections) providing not only for first registration of title to land adjudicated under the LAA, but also for the operation of the whole system of registered land for the indefinite future'.

[10] In **Matty**, this Court said at paragraph 25 of its judgment that:

> "The LRTP… by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia. It provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed. It was a

[4] Cap. 5.06, Revised Laws of Saint Lucia 2015.
[5] [2007] UKPC 93, at para.2.
[6] SLUHCVAP consolidated appeals 2011/0025 and 2012/0037, (delivered 18th October 2006, unreported).

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

[11] To these statements, I add the Privy Council's observations about the Torrens system in **Richardson Anthony Arthur v The Attorney General of Turks and Caicos Islands**.[7] The Privy Council noted:

> "Registration of title was introduced into Australia by Sir Robert Torrens in 1858. The system, which came to be known as the Torrens system and was first embodied in the South Australian Real Property Act 1858, spread to the other colonies in Australia and New Zealand and later to many other countries in the Commonwealth and elsewhere. The objective of the system was to achieve complete certainty of title. It was described by Barwick CJ in *Breskevar* [sic] *v Wall* (1971) 126 CLR 376, 385 as 'not so much a system of registration of title but a system of title by registration'." (Underlining supplied)

[12] Barwick CJ in **Breskvar v Wall**[8] briefly explained the nature of this paradigm shift, as follows:

> "The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor." (Underlining supplied)

The Land Registration Act

[13] I now turn to the provisions of the LRA. The LRA's long title describes it as: 'An Act to make provision for the registration of land and for dealing in land so registered and for purposes connected therewith'. Section 2 of the LRA contains the interpretation provision. 'Court' save as is otherwise expressly provided, '…means the High Court of Saint Lucia'. The word 'dealing' is said to include a disposition and transmission. A 'disposition' means 'any act inter vivos by a proprietor whereby his or her rights in or over his or her land, lease or hypothec are affected, but does not include an agreement to transfer, lease or

[7] [2012] UKPC 30.
[8] (1971) 126 CLR 376.

hypothecate such land'. A 'transmission' means 'the passing of land, a lease or a hypothec from one person to another by operation of law on death or insolvency or otherwise and includes the compulsory acquisition of land under any written law'.

[14] Part 2 of the LRA deals with, among other things, the organisation and administration of the land registry, the appointment and powers of the registrar of lands, the land register, registry maps, boundaries, combinations, subdivisions and reparcellations. Part 3 deals with the effect of registration. Part 4 deals with land certificates and searches. Part 5 deals with dispositions. Section 37 under this part states:

> "No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish vary or affect any right or interest in the land, lease or hypothec."

[15] Part 6 deals with instruments and agents. Part 7 deals with transmissions and trusts. Under Part 7, provisions are found dealing with transmission by death, on bankruptcy, and in respect of a liquidation. Section 80 of this part has been relied upon by the appellant. It states:

> "Where the Crown or any person has become entitled to any land … under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he or she may require, register the Crown or the person entitled as the proprietor."

I will return to this provision later in the judgment.

[16] Part 8 deals with restraints on disposition. Part 9 deals with prescription which is at the heart of this appeal. I have set out the relevant provisions in full below:

> "**94. ACQUISITION OF LAND BY PRESCRIPTION**
>
> (1) Any person who claims to have acquired the ownership of land by positive prescription may apply to the Registrar in accordance with rules of court for registration as proprietor thereof.
>
> (2) A person possessing land in a fiduciary capacity on behalf of another shall not acquire by prescription ownership of the land as against such other.

95. PROCEDURE WHEN LAND ACQUIRED BY PRESCRIPTION

(1) On application by any person for registration as proprietor under section 94(1) the application shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.

(2) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other person who may, in his or her opinion, be affected thereby.

(3) After one month has elapsed from the date of giving notice under subsection (2) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him or her as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession." (Underlining supplied)

[17] I now set out the relevant provisions of Part 10 which deals with rectification of the land register.

"**97. RECTIFICATION BY REGISTRAR**

(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

(a) informal matters and in the case of omissions not materially affecting the interest of any proprietor;

(b) where any person has acquired an interest in land by prescription under Part 9;

(c) in any case and at any time with the consent of all persons interested;

(d) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his or her intention so to rectify.

(e) upon receipt of any decision of the Land Adjudication Tribunal made under section 20(3) of the Land Adjudication Act. *(Inserted by Act 7 of 1986)*

(2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor make an entry in the register to record the change.

98. RECTIFICATION BY COURT

(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default." (Underlining supplied)

[18] Part 11 deals with the power of the registrar to state a case for the opinion of the High Court, in relation to the exercise of any power, or the performance of any duty imposed by the LRA on the registrar, either at the instance of the registrar or an aggrieved party. The court's opinion is then binding on the registrar. Apart from stating a case, section 105, under this part, also provides for appeals to the High Court by the minister or any person aggrieved by a decision, direction, order, determination or award of the registrar. The court may then make such order on the appeal as the circumstances require, and the registrar must give effect to the order.

[19] The final part, part 12, encapsulates a number of miscellaneous provisions such as fees, offences, the making of rules, and savings provisions. It also contains section 115 which deals with the jurisdiction of the courts and states as follows:

"**115. JURISDICTION OF COURTS**
Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or hypothec, registered under this Act or to any interest in any such land, lease or hypothec, being an interest which is registered or registerable under this Act, or being an interest which is referred to in section 28, shall be tried by the Court, or where the value of the subject matter in dispute does not exceed $2,000 by a district court."

Prescription Under Part 9 of the LRA

[20] The substantive requirements for the acquisition of land by prescription are uncontroversial. The LRA does not set out a prescription period, nor does it contain any provisions as to the meaning of prescription or the principles of possession for the purposes of prescription. However, having regard to the framing of section 94(1) of the LRA, it is clear that it was unnecessary to replicate these provisions in the LRA given that the substantive law is already set out in the Civil Code. It is therefore not disputed that a period of 30 years of sole and undisturbed possession is the period fixed by the Civil Code, in respect of which a person may acquire title to immovable property by prescription. This

is contained in article 2103A, which was added to the Civil Code by Act No. 34 of 1956. Articles 2056 to 2064 of the Civil Code set out the meaning and principles of possession. Article 2057 states that 'for the purposes of prescription the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor'. There can be no doubt that the registrar is required to have recourse to the provisions of the Civil Code in 'being satisfied that the applicant has acquired the ownership of the land claimed' when considering an application under the LRA for registration as proprietor by positive prescription.

[21] Section 94(1) of the LRA also says that an application to the registrar for the registration of an interest in land acquired by 'positive prescription' is to be made in accordance with rules of court. It is common ground however that no rules of court have been made under the LRA. The only rules of court dealing with prescription of immovable property are the Prescription Rules which predate the LRA and which speak to an application by way of petition to the High Court of Saint Lucia for a declaration of title.

Discussion and Analysis

[22] This brings me to the nub of the issue which is whether the procedure for obtaining prescriptive title to land under article 2103A and the Prescription Rules, has been overtaken by part 9 of the LRA. The principles on implied repeal are trite and have remained virtually unchanged since the 19th century. In **Kutner v Phillips**[9] AL Smith J said:

> "[A] repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together .... Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal will not be implied and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together."

The test is repeated in **West Ham Church Wardens and Overseers v Fourth City Mutual Building Society** which says: 'the test of whether there has been a repeal by

[9] [1891] 2 QB 267 at p 271.

implication by subsequent legislation is this: Are the provisions of a later Act so inconsistent or repugnant with the provisions of an earlier Act that the two cannot stand together?'.[10]

[23] Floissac CJ in **Attorney General of Antigua and Barbuda and another v Lewis (Arland)**,[11] accepted the following principles on implied repeal in **Halsbury's Laws of England**,[12] which are germane for these purposes:

> "966. Repeal by implication is not favoured by the courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. However, if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms.
> …
> The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done, and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication.'" (Underlining supplied)."

[24] The question which falls to be determined therefore is whether the procedure under part 9 of the LRA is so inconsistent or repugnant with the provisions of the earlier article 2103A and the accompanying Prescription Rules, that they cannot stand together. Stated differently, the task at hand is to determine whether it is reasonably possible to construe the provisions in a manner which is capable of giving effect to both sets of procedure.

Inherent Conflict: The LRA and Declarations of Title

[25] With the completion of the LRTP, and the advent of the LRA, the goalposts of Saint Lucia's land ownership system shifted significantly. Title is no longer derivative and can no longer

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[10] [1892] 1 QB 654 at p. 658.
[11] (1995) 51 WIR 89.
[12] Halsbury's Laws of England (4th edn., 1973) Vol. 44 at paras 966 and 969.

be conferred, discerned or extracted from any document other than the land register. It is the LRA which governs all lands in Saint Lucia, as all lands have been registered under the regime operated by the LRA. The registered land system replaced the previous system whereby title was conferred by deed and subsequently registered by volume and folio (the "title by deed system").[13] Under the title by deed system, the declaration of title issued by the court in accordance with article 2103A and the Prescription Rules had the effect, itself, of conferring prescriptive title. In that connection, the name "declaration of title" was indicative of its effect; the declaration was the title which was issued and subsequently registered.

[26] Since the fulsome implementation of the registered land system, there is simply no system of land ownership in Saint Lucia existing outside of the registered land system under the LRA in respect of which a declaration of title may effectively vest title. In other words, because of its purported effect, a declaration of title is, by its very nature, incompatible with the registered land regime. Accordingly, I am of the view that it is not open to any person to ignore the plain language and express provisions of the LRA and continue to use the procedure under the Civil Code and the Prescription Rules to obtain title to land, when the LRA does not provide for it and, instead, expressly provides its own procedure or gateway for obtaining title by prescription. Title must necessarily be registered title in accordance with the LRA which expressly and exclusively 'applies to registered land'.

[27] Quite apart from what I observe to be an inherent conflict between the nature of a declaration of title and the registered land system, the continued coexistence of the court's jurisdiction under article 2103A alongside the LRA, has the potential to lead to a circular and highly undesirable result which I will seek to explain in the following paragraphs. The short point here, however, is that a declaration of title by the court, obtained by way of the procedure under the Prescription Rules, is a feature of a now abolished system of "registration of title" (as opposed to the current system of "title by registration"), and is therefore inherently ineffective as a means of conferring title.

[13] Evidence of this previous system is found in the Prescription Rules Form 1 provides for the description of land by volume and folio.

Absurd Circularity in Procedure

[28] I now return to the point of circularity which was introduced at [27] above. The respective procedures under the Prescription Rules and the LRA purport to vest an original jurisdiction in both the High Court and the registrar to determine prescription claims. The LRA goes on to provide for the stating of a case for the opinion of the High Court (section 104) as well as for an appeal to the High Court by any person aggrieved by a decision, direction, order or determination of the registrar (section 105). Both sections 104 and 105 very clearly encompass a decision taken by the registrar to rectify the register on the basis of a prescriptive claim. In these circumstances therefore, section 104 vests the High Court with an advisory jurisdiction, and section 105 an appellate jurisdiction, over decisions of the registrar to rectify or refuse to rectify the register on the basis of a prescription claim.

[29] Collectively, these provisions create no real difficulty, absurdity or conflict in circumstances where a party elects to enjoin the jurisdiction of the registrar at the outset of a claim for prescriptive title. The issue of circularity, however, arises where one chooses to engage the original jurisdiction of the High Court under article 2103A, at the first instance, to determine a claim for title by prescription. The inconsistency is not, to my mind, as the learned judge stated, that there is a possibility that following the issuance of a declaration of title by the court, the registrar may effectively overrule a declaration of title by a High Court judge,[14] as there is nothing, in theory, which prohibits parliament from legislating to that end. Rather, it would be incongruous were the court, on declaring title pursuant to article 2103A and the Prescription Rules, to then have a person aggrieved by the act of rectification by the registrar, return to the same High Court (which issued the declaration in the first place) for determination of that grievance by way of an advisory opinion or appeal by way of section 104 or 105. The High Court would, in these premises, possess an original, appellate and advisory jurisdiction in relation to the same application, with the result being that the parties to an application (or the registrar) could lawfully invoke each of the court's jurisdictions within the same matter. This result, in my view, is more than merely undesirable and is within the realm of a repugnance which disables the possibility

[14] See para. 30 of the judgment below.

of reposeful existence between the two procedures; such repugnance being an indication that the procedure under the Prescription Rules was intended by parliament to cease to be an effectual mode of obtaining prescriptive title.

Reasonable Possibility of Coexistence

[30] For it to be, in the words of **Halsbury's Laws of England** quoted at [23] above, 'reasonably possible so to construe the provisions as to give effect to both', one must be prepared accept one or more of the following propositions:

(i) There is some system, other than the LRA, which governs the passage of title to land in Saint Lucia;

(ii) The court may order that the land register be rectified upon its issuance of a declaration of title;

(iii) A party who has obtained a declaration of title is thereby entitled to rectification of the land register to reflect ownership;

(iv) The registrar is permitted to act on the basis of a declaration of title issued by the court; or

(v) As a means of circumventing the absurd jurisdictional circularity which is caused by the provisions' coexistence, an appeal of the registrar's decision is to the Court of Appeal.

I am unable to accept any of these propositions.

[31] In relation to proposition (i), there is no doubt that Saint Lucia's registered land regime is a comprehensive system of land ownership which operates to the exclusion of the previous title by deed system. There is simply no extant law or regime which is capable of effectively passing title to land in Saint Lucia, other than the LRA, which makes no provision for the recognition of a declaration of title.

[32] Proposition (ii) is not supported by the express terms of the Civil Code and the LRA. Article 2103A is very clearly framed to empower the court to make a declaration of title, and nothing more. Further, section 98 of the LRA, which provides for the court's jurisdiction to make an order that the register be rectified, is limited to circumstances where there is some fraud or mistake in the registration process. There is also no authority which suggests that the registrar may rectify the land register in circumstances other than those expressly mentioned in the LRA. In fact, cases interpreting similar provisions in Commonwealth Caribbean jurisdictions appear to encourage a strict approach to the interpretation of the powers under the LRA.[15]

[33] Proposition (iii) is also overcome by the express words of the LRA. As matters stand, it is only the registrar who is empowered, under section 97 of the LRA, to rectify the land register on the basis of an application for prescription made under part 9. Such a declaration, does not oblige the registrar to simply accept the declaration, without more, nor does it relieve the registrar, in any way, of their duty to be satisfied that the claim for title by prescription has been made out. Indeed, it would be open to the registrar in those circumstances to arrive at a contrary conclusion on the merits of any claim. As such, it cannot be sensibly argued that a declaration of title by the court is one and the same as, or necessarily obliges the registrar to effect registration by rectification under either of sections 97 or 98 of the LRA, which is the manner in which prescriptive title is conferred under the LRA.

[34] As regards proposition (iv), the power to rectify the land register is within the purview of the registrar, who is a creature of statute and who can only act within the four corners of the LRA. There is no provision in the LRA which empowers the registrar to act on a declaration of title made by the court and on that basis rectify the land register. Under section 97, it is clear that the registrar is empowered to rectify the land register on the basis of prescription only where an application has been made under part 9 of the LRA,

[15] See for example William Quinto and another v Santiago Castillo Limited [2009] UKPC 15; Sylvina Louisien v Joachim Rodney Jacob (see n. 5); and Loopsome Portland el al v Sidonia Joseph Saint Lucia Civ. App No.2 of 1992 (delivered 25th January 1993, unreported).

and not pursuant to a declaration of title issued by the court. The statutory requirement for the registrar to be satisfied that a prescription claim has been made out, is one for which there is no discretion to overlook or bypass.

[35] Proposition (v) is also untenable given the express words of the LRA. To take such an approach would render useless the express and comprehensive scheme governing registered land, and the process of decision making with rights of appeal to the High Court in respect of matters concerning registered land under sections 104 and 105. In that connection, it must be presumed that parliament did not legislate in futility, and intended that legislation passed would be given effect, in the applicable circumstances. The absurd circularity therefore, in my view, cannot be avoided.

[36] In the premises therefore, I find that it is not reasonably possible to construe the procedures under both the Prescription Rules and the LRA in a manner that gives sensible effect to both. Accordingly, I agree with the judge's conclusion that the procedure for invoking the High Court's jurisdiction under the Prescription Rules has been impliedly repealed.

[37] Before departing from this point, I wish to observe that even if one were to take the view that the court's jurisdiction under article 2103A and the procedure under the Prescription Rules have not been impliedly repealed, there is to my mind, at the very least, the ineluctable conclusion that the court's jurisdiction has been rendered otiose by the registrar's powers under the LRA. Firstly, a party who takes the route of article 2103A and the Prescription Rules is not relieved from the requirement of making an application under part 9 of the LRA if he wishes to become registered as proprietor by prescription, as it is only the registrar who may rectify the land register upon being satisfied that the land was in fact prescribed, and upon an application pursuant to part 9 of the LRA. It may very well be that a person who has obtained a declaration may rely on it in making his application to the registrar under part 9 of the LRA. But such a declaration, in and of itself, does not oblige the registrar to simply accept the declaration without more, nor does it relieve the registrar

in any way of the duty to themselves to be satisfied that the claim for prescriptive title has been made out.

[38] In other words, the short point here is that the provisions of the LRA have, in any event, rendered the court's original jurisdiction under article 2103A, along with the accompanying Prescription Rules redundant and therefore, for all intents and purposes, an exercise in futility, as a declaration of title does not allow the registrar or the court, without more, to rectify the land register in respect of registered land. The LRA and the Civil Code, are devoid of that missing link. It is not for the courts to fill the gap and provide the link. Rather, it is a matter for the parliament of Saint Lucia.

The Extant Jurisdiction of the Court in Prescription Claims

[39] A concern expressed relates to whether the LRA has ousted the jurisdiction of the courts in favour of the registrar, who is an administrative officer, in relation to claims for prescriptive title which usually contain substantial disputes of evidence, and which were traditionally determined by the courts. I wish to make two comments in this regard. First, as regards the powers of the registrar under the LRA, it is clear that the LRA, and other land registration systems modelled from the Torrens system, does not intend that the registrar act in merely an administrative capacity, but intends to vest the registrar with judicial and quasi-judicial powers. It suffices in the circumstances to adopt the words of the E.A. Francis in **The Law and Practice Relating to Torrens Title in Australasia**:

> "Although the Registrar is here referred to as the chief administrative officer, it is not intended to imply that his duties are administrative or ministerial only. Indeed, it is clear that some of the duties of the Registrar are quasi-judicial. In Templeton v Leviathan Pty. Ltd. Higgins, J., said: 'The Registrar has to discharge not merely ministerial, but also judicial duties; and it is his duty to 'prevent instruments from being registered which is in law as well as fact, ought not to be placed on the register' (Registrar of Titles v. Paterson; Ex parte Bond; R. v. Registrar of Titles; Ex parte Briggs; Ex parte National Trustees Executors and Agency Co. of Australia)'."[16]

[16] E. A. Francis, The Law and Practice Relating to Torrens Title in Australasia: Volume 1 (1972) Butterworth & Co. (Australia) Ltd at page 46.

[40] Second, on the matter of jurisdictional ouster, while it is true that the effect of my earlier findings is that the provision for the original jurisdiction of the High Court to determine prescription claims has been impliedly repealed, as stated earlier, the LRA vests the court with both an advisory and appellate jurisdiction over decisions of the registrar on prescription claims under section 94 of the LRA. Quite apart from the appeal provisions referred to earlier, and section 98 (which speaks to court-ordered rectification), section 115 of the LRA expressly retains the court's jurisdiction in respect of civil suits and proceedings relating to the ownership or the possession of land or an interest in land, as the forum to try such cases.

[41] The instant case is not in the nature of a dispute as to ownership of the portion of parcel 743 as, the very concept of prescription involves the recognition of the paper title owner against whom the person claiming is being said to have prescribed. Similarly, it is not a claim for possession since the appellant is not asserting a claim as an owner seeking possession from some other person. Rather, he is seeking to be recognised as owner based on his own possession. A dispute as to ownership can result in a rectification of the land register in cases where a fraud or mistake has been made out, either in respect of a first registration or a subsequent registration.[17] In my view, therefore, the court retains some jurisdiction, albeit in a different form than that which arises from article 2103A.

Section 80 of the LRA

[42] The appellant has also prayed in aid section 80 of the LRA. This section has been set out in [15] above. He says that this section allows the registrar to act on the court's declaration of title. I respectfully disagree. This section, as the heading suggests, deals with the registration of ownership in land acquired by way of transmission. 'Transmission' is defined in section 2 of the LRA to mean 'the passing of land, a lease or a hypothec from one person to another by operation of law on death or insolvency or otherwise and includes the compulsory acquisition of land under any written law'. The provision also

[17] See Skelton and others v Skelton (1986) 37 WIR 177; Webster v Fleming Anguilla High Court Civil Appeal No. 6 of 1993 (delivered 8th May 1995, unreported); and Sylvina Louisien v Joachim Rodney Jacob (see n. 5).

provides for transmissions which may come about as a result of the court ordering a sale of land by way of enforcement of a judgment, or a judicial sale allowed under the Civil Code and **Code of Civil Procedure**.[18] It is clear that section 80 has nothing to do with rectification of the land register. It simply permits 'registration', as distinct from 'rectification' of the land register, where the land in question has passed from one registered owner to a subsequent owner (which may be either the Crown or some other person) by operation of law on death or insolvency or otherwise, including compulsory acquisition by the Crown.

[43] A registration by virtue of a transmission is not in play here. This case is simply one of rectification pursuant to prescription rather than pursuant to a transmission. Indeed, there is no provision in the LRA which allows for rectification of the land register on the basis of a transmission. I have taken on board the observations made by this Court in the case of **David George v Albert Guye**[19] at paragraphs 22 to 24. These observations reinforce my view that the LRA must be construed in accordance with what it says. Part 9 and sections 97 and 98 of the LRA are clear and must be construed by according them their ordinary meaning.

Section 3 of the LRA – Its Repeal and Replacement

[44] The appellant sought to place reliance on section 3 of the LRA which was repealed and replaced by the **Land Registration (Amendment) Act**.[20] The appellant argues that this amendment was made so as to allow the procedure provided in the Civil Code and the Prescription Rules to continue to apply alongside the provisions of the LRA. The original section 3 of the LRA read as follows:

> "(1) Except as otherwise provided in this Act, no other law and no practice and procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act**:**
>
> However, except where a contrary intention appears, this Act shall not be construed as permitting any dealing which is forbidden by the express

[18] Cap. 243, Revised Laws of Saint Lucia 2015.
[19] DOMHCVAP2012/0013 (delivered 12th June 2017, unreported).
[20] Act No. 2 of 1987.

provisions of any other law or as overriding any provision of any other law requiring the consent or approval of any authority to any dealing."

(2) The provisions of this Act shall apply only to land, interests in land or dealings in land registered under this Act."[21] (Underlining supplied)

The amended section 3 reads as follows:

"The provisions of this Act shall apply only to land, interests in land or dealings in land registered under this Act:

However, except where a contrary intention appears, this Act shall not be construed as permitting any dealing which is forbidden by the express provisions of any other law or as overriding any provision of any other law requiring the consent or approval of any authority to any dealing."[22] (Underlining supplied)

The change is obvious. What was formerly section 3(1) with a proviso, has been deleted and replaced with what was formerly section 3(2) with the same proviso. No information was provided to the Court on the background to this amendment. Neither is there an explanatory note contained in the Amendment Act. The change is obvious but, in my view, is a change without a difference having regard to the clear language of what was section 3(2) and what is now section 3.

[45] To my mind the amendment to section 3 takes the matter no further for at least two reasons. First, any petition filed in accordance with the Prescription Rules will be in respect of land registered under the LRA, which is the legislation that applies to 'land, interests in land or dealings in land registered under the Act'. I therefore underscore my conclusions made in the above paragraphs, that:

(i) there is no land in Saint Lucia to which a declaration of title can effectively vest title;

(i) there is no provision under the LRA for the recognition of a declaration of title, or any power of the registrar to be bound by or required to comply with a declaration of title;

[21] Section 3, Land Registration Act, Act No. 12 of 1984.
[22] See Act No. 2 of 1987 or section 3, Land Registration Act Cap 5.01, Revised Laws of Saint Lucia 2015.

(ii) the court's power to order rectification of the land register is limited to circumstances where there is some operating fraud or mistake in the registration process (section 98); and

(iii) in any event, a declaration of title under article 2103A, without more, does not entitle a party to rectification of the land register.

[46] Second, and in any event, the original iteration of section 3 appears, to me, to operate against the appellant's argument that the court's jurisdiction under article 2103A along with the Prescription Rules, have survived the implementation of the LRA. The original section is couched in strikingly mandatory terms and prohibits the operation of any other law or procedure relating to land registered under the LRA, in so far as they are inconsistent with the LRA. As I have stated there is, to my mind, patent inconsistency arising from the coexistence of the court's jurisdiction under article 2103A and the LRA. As such, the original section 3 would have had the effect of repealing the court's jurisdiction under article 2103A and the accompanying Prescription Rules and is strong evidence towards the conclusion that the court's jurisdiction was not intended to survive the implementation of the registered land system. If one were to take the view that section 3 effectively repealed the court's jurisdiction under article 2103A and the Prescription Rules, a subsequent "softening" of the language contained in section 3 could not resuscitate them; they would have to be expressly re-enacted.

The Consequence on Prior Declarations

[47] Lastly, I turn to the complaint that the learned judge erred in holding that the LRA had impliedly repealed the Prescription Rules, by his failure to have sufficient regard to the legal position of persons who have obtained prescriptive title under the Civil Code and the Prescription Rules after the LRA came into effect in 1984. This is a short point. I can do no better than borrow from the statements of the learned judge at paragraph 29 of his judgment in addressing this concern:

> "… it might be said that a finding now of implied repeal would introduce uncertainty and disruption of a functioning system. Be that as it may, when it comes down to the forensic crunch, the Court must give effect to the clear and unambiguous will of a sovereign parliament that jurisdiction to decide prescriptive

> title to land in Saint Lucia vests in the Registrar. The legal challenge to the Rules having finally come, it cannot be ignored."

[48] To those statements, I would simply add that I know of no legal principle that enables the court to ignore the law when an issue arises for determination because persons have chosen to so ignore it for several years. A common practice engaged in over a number of years which is outwith the LRA and the statutory powers of the registrar given under the LRA, does not thereby render it correct by common and repetitive usage over time. In fact, the Privy Council made such an observation at paragraph 19 of **Beverley Levy v Ken Sales and Marketing Limited**,[23] albeit with respect to a different subject matter. In **Beverley Levy**, the Privy Council said:

> "There appears to have been no statutory power for courts in Jamaica to make charging orders until the recent enactment of legislation enabling courts to do. That legislation came into effect on 25 March 2003. Neither the charging order made by Anderson J on 23 October 2001 in action K-062 nor the charging order made by McIntosh J on 15 January 2003 can draw support from that enactment. …. Nonetheless their Lordships have been given to understand that it had for many years prior to 25 March 2003 been the practice in Jamaica for courts, when making a section 134 order for sale for the purpose of execution against a debtor's land, to complement the order by the addition of a charging order."

That said, I express no view as to the merits or demerits of any prior claims in respect of which declarations of title have been made subsequent to the coming into effect of the LRA or for that matter, any decisions taken by the registrar with reference to the same. It is however the function of the Court to decide what the law is on an issue raised before it.

[49] The Civil Code is not inviolate. Indeed, power is given under section 19 of the **Eastern Caribbean Supreme Court Act**[24] to the Chief Justice and any other 2 judges of the Supreme Court to:

> "make, add to or annul any rules of court for the more effectual carrying out of any of the provisions of the Civil Code or of any other statute, and any such rules may repeal any provisions of the said Civil Code or of any other statute and substitute other provisions in lieu thereof." (Underlining supplied)

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[23] [2008] UKPC 6.
[24] Cap. 2.01, Revised Laws of Saint Lucia 2015.

[50] The 1996 decision of the Court of Appeal in **Spiricor of Saint Lucia Limited v Attorney General and Hess Oil Saint Lucia Limited**[25] furnishes a good example of provisions of the Civil Code being made to give way to the provisions of the LRA where a conflict existed between the two. In **Spiricor**, the appellant sought to assert that it was entitled to ownership and possession of property without the necessity for registration under the LRA. In the judgment of the Court, Byron CJ [Ag.] had this to say:

> "The Registered Land Act (the Land Registration Act) of 1984… made significant changes to the regime of land registration and ownership. The most important is that the transfer of land, contrary to provisions of Articles 957 and 1382 of the Civil Code, is no longer based on the consent of the vendor but on the completion of the registration process under the provisions of the Act."

In the said judgment he later cited a passage from what he called the 'excellent work' – **Coutume de Paris to 1988: The Evolution of Land Law in St. Lucia** by Winston F. Cenac, QC where at page 93 of that work Mr. Cenac said this:

> "… the concept that entry in the register alone confers title is central to the scheme of the new registration system and any provision which derogates from that central idea or which casts doubt on it should be removed from the statute book. The conflict between section 56(2) of the 1984 Act and section 957 of the 1957 Civil Code is an example of the problems which general legislative provisions can create without proper attention being paid to consequential amendments."[26]

I agree with the sentiments expressed by Mr. Cenac. Unfortunately, the problems persist as no steps have to date been taken to carry out a tidying up exercise.

Conclusion

[51] For all the above reasons, I am driven to the conclusion that the provisions of the LRA have overtaken the Prescription Rules, rendering them, and a declaration obtained thereby, otiose. To that extent, the Prescription Rules and the tail-end of article 2103A, which provides for the issuance of a declaration of title by the Supreme Court on the basis of prescription, have been impliedly repealed by the provisions contained in part 9 and section 97 of the LRA, and I would so hold.

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[25] (1997) 55 WIR 123.

[26] Winston F. Cenac: Coutume de Paris to 198: The Evolution of Land Law in St. Lucia, Voice Press, 1989.

Disposition

[52] I would accordingly dismiss this appeal with costs to the respondents to be assessed unless agreed within 21 days.

[53] Lastly, I am grateful to counsel on both sides for their helpful submissions, both written and oral. The delay in rendering this decision is deeply regretted.

Dame Janice M. Pereira DBE
Chief Justice

[54] **WEBSTER JA [AG.]**: I have read, in draft, the judgments prepared by the Chief Justice and my brother Michel JA. I agree with the reasoning and conclusion of the Chief Justice and I would also dismiss the appeal with costs to the respondents.

Paul Webster
Justice of Appeal [Ag.]

[55] **MICHEL JA:** I have read the judgment of the learned Chief Justice, with which my brother, Webster JA concurs, and I agree with its contents as an exposition of what has come to be referred to as the land registration system. I believe that this exposition presents an accurate statement of the land law of those territories in the Commonwealth Caribbean whose land law had been derived from English common law and statutes and is now contained principally in the registered land acts in these territories. In Saint Lucia, though, the land registration system was an addition to and not a substitution for the land law of the country, which is derived from the Quebec Code and is contained in the **Civil Code of Saint Lucia**. Respectfully, I do not agree that the Chief Justice's exposition presents an accurate statement of what I understand to be the land law of Saint Lucia.

[56] The judgment under appeal in this case is a judgment of Godfrey Smith J dated 10th November 2017 in which he held, on a summary judgment application, that the appellant (as the respondent to the application) had no prospect of successfully defending the

application to set aside an order of Belle J made on 31st January 2011. The learned judge accordingly granted summary judgment to the respondents (who were the applicants in the application); declared that the **Supreme Court – Prescription by Thirty Years (Declaration of Title) Rules** had been impliedly repealed by the **Land Registration Act**; set aside the judgment of Belle J; and ordered the appellant to pay costs to the respondents.

[57] In the interest of brevity and clarity, the following abbreviations and designations will be used in this judgment. The appellant, Ferdinand James (who was the respondent to the application for summary judgment) will be referred to as 'Ferdinand James' or 'James'. The respondents, Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited (who were the applicants in the application for summary judgment) will be referred to as 'Planviron and Rodney Bay Marina'. The **Land Registration Act** will, at times, be referred to as 'the Act'. The **Civil Code of Saint Lucia** will be referred to as 'the Civil Code' or as simply 'the Code'. The **Supreme Court – Prescription by Thirty Years (Declaration of Title) Rules** will be referred to as 'the Prescription Rules' or as simply 'the Rules'.

Background

[58] On 7th September 2009, Ferdinand James filed a petition in the High Court seeking a declaration from the Court that he is the owner of a portion of land comprising approximately 7,000 square feet at Rodney Bay in the District of Gros Islet on the basis of his sole and undisturbed possession of the portion of land for a period in excess of thirty years (from around 1971 to the date of filing the petition in 2009). The petition was brought under article 2103A of the Civil Code (although the Prescription Rules were included as part of the heading of the petition). The petition was supported by an affidavit by James and affidavits of six other affiants who swore to being aware of James' occupation of the portion of land from the early 1970s. The petition and supporting affidavits were filed together with a summons, copies of which were published in two consecutive issues of the Saint Lucia Gazette and in a local newspaper. The summons, when published in the Gazette, notified the world of the petitioner's application for prescriptive title of the land and invites any person claiming an interest in the land to enter

an appearance in the High Court Registry within one month of the date of the last publication of the summons. No one entered an appearance in response to the notice.

[59] Upon hearing the petition on 31st January 2011, Belle J issued a declaration of title to the subject property in favour of the petitioner and ordered the registrar of lands to rectify the appropriate land register accordingly. At the hearing of the petition by Belle J, counsel appeared for James and for the Crown, but there was no appearance of or for Planviron and Rodney Bay Marina, who were not parties to, and not served with, the 'without notice petition'.

[60] On 19th May 2011, Planviron and Rodney Bay Marina filed a notice of application asking that the order of Belle J dated 31st January 2011 be set aside. The application contained eight grounds on the basis of which a judge of the High Court was being asked to set aside an order of a judge of coordinate jurisdiction. The first to the fifth grounds alleged non-compliance by James with some of the requirements of the Prescription Rules; the sixth ground alleged that the proceedings were not instituted, and Planviron was not served, in accordance with sections 94 and 95 of the **Land Registration Act**, which (in their view) impliedly repealed the Prescription Rules; the seventh ground disputed James' exclusive occupation of the subject land in the manner and for the period stipulated by law; whilst the eighth ground alleged that the subject land was imprescriptible.

[61] On 24th June 2011, James filed an affidavit in response to the application by Planviron and Rodney Bay Marina in which he averred, inter alia, that Belle J's order, not being a default judgment, could not be set aside by application, and particularly not by persons who were not parties to the petition on the basis of which the order was granted. James also averred in his affidavit in response, that the declaration of title was issued by Belle J in accordance with the law and it could not be set aside on the application made by Planviron and Rodney Bay Marina.

[62] The application to set aside Belle J's order was heard on 5th July 2011 and was dismissed on 13th February 2013, on the basis that the applicants had used the wrong procedure in

making the application. The dismissal of the application was appealed by the applicants. The appeal was heard on 19th December 2013, whereupon this Court allowed the appeal, set aside the order made on 13th February 2013 and restored the application to set aside the order of Belle J dated 31st January 2011. At the scheduled hearing of the restored application on 7th June 2017, counsel for the parties agreed that the issue to be determined on the application, being essentially a point of law as to whether the pre-existing regime for obtaining title to land by prescription had been impliedly repealed by the **Land Registration Act**, would best be resolved on an application for summary judgment to be brought by Planviron and Rodney Bay Marina.

The Learned Judge's Judgment

[63] On 13th June 2017, an application for summary judgment was filed by Planviron and Rodney Bay Marina. In that application, the applicants applied for summary judgment on their May 2011 application to set aside the January 2011 order of Belle J; a declaration that the Prescription Rules had been impliedly repealed by the **Land Registration Act**; and an order declaring the order of Belle J to be 'null, void and of no effect'.

[64] The principal ground of the summary judgment application was that James had no reasonable prospect of successfully defending the set aside application on the ground of implied repeal, because the **Land Registration Act** is so inconsistent with and repugnant to the Prescription Rules that the two are incapable of standing together and therefore the later law (the **Land Registration Act**) must override the earlier law (the Prescription Rules).

[65] On 10th November 2017, the learned judge - after receiving written submissions from both the applicants and the respondent - made a finding that Ferdinand James had no prospect of successfully defending the application to set aside the order of Belle J made on 31st January 2011. The learned judge then made the following orders:

> "(1) It is hereby declared that the **Supreme Court – Prescription by 30 years (Declaration of Title) Rules** have been impliedly repealed by the **Land Registration Act**.
>
> (2) Summary Judgment is granted in favour of the Applicants.

(3) The order of the Honourable Justice Belle in SLUHCV 2009/0766 dated 31st January 2011 is set aside.

(4) Each party shall bear his or its own costs."

The Appeal

[66] By notice of appeal filed on 2nd February 2018, James appealed the judgment of the learned judge on the following grounds:

"a. The learned trial judge erred in law when he found that there was an inconsistency between the Code/Rules and the LRA which makes the Code/Rules so repugnant as to be impliedly repealed by the LRA.

b. The learned judge failed to follow the directions of the order of the Court of Appeal dated 19th December, 2013 to treat the application to set aside as a petition in opposition to the application for prescriptive title, [and] for the case to be decided on its merits. Further, the learned trial judge:

(i) failed to consider adequately or at all whether the Appellant had a reasonable prospect of defending the opposition to the petition with regard to the order granting prescriptive title;
(ii) wrongly determined that the Appellant had no prospect of defending the application to set aside the order of Belle J; and
(iii) failed to give reasons for concluding that the Appellant had no prospect of defending the application to set aside.

c. The learned trial judge erred in determining that an application for prescriptive title should be made under the provisions of the LRA and failed to consider sufficiently or at all the legal position of persons who have obtained prescriptive title under the Code/Rules subsequent to 1984 when the LRA came into force."

[67] On 2nd February 2018, the appellant also filed skeleton arguments in support of the appeal. In his skeleton arguments, the appellant at first submitted that the application for a declaration of title was made pursuant to articles 2103 and 2103A of the Civil Code[27] and then that it was made pursuant to the Prescription Rules.[28] The appellant framed the main issue in the appeal as – whether part 9 of the **Land Registration Act** impliedly repealed articles 2103, 2103A and 2047 of the Civil Code and, by extension, sections 4 to 12 of the Prescription Rules.

[27] Para. 4 of the skeleton arguments.
[28] Para. 5 of the skeleton arguments.

[68] Written submissions on behalf of the respondents were filed on 28th February 2018. In their submissions, the respondents argued that the **Land Registration Act** impliedly repealed the Prescription Rules and, as a consequence, Belle J's order of 31st January 2011, having been made further and pursuant to the Prescription Rules, is 'a nullity, void and of no effect'.

[69] Notwithstanding the several issues on which submissions were made by the parties, whether in writing or by counsel on their feet at the hearing of the appeal, the sole issue in this appeal is whether the pre-existing regime for obtaining title to land by prescription had been impliedly repealed by the **Land Registration Act**.

Discussion and Analysis

[70] It is to be noted that in the application for summary judgment, the affidavit in support, and the written submissions in support of the application, Planviron and Rodney Bay Marina do not ever mention article 2103A of the Civil Code, except (out of necessity) when the order of Belle J is set out in the notice of motion as the order which the respondents are seeking to set aside. That order is as follows:

> "(1) That a Declaration of Title is hereby issued in favour of the Petitioner. THIS COURT DECLARES that pursuant to Article 2103A of the Civil Code, Cap 4.01 of the Revised Laws of St Lucia 2001. The Petitioner Mr. Ferdinand James is the owner of 7,000 sq. ft of land to be dismembered from Block 1255B Parcel No. 743 in accordance with the Sketch Plan of Dunstan Joseph exhibited to the Petition.
>
> (2) That the Registrar of Lands is to rectify the Land Register for Block 1255B Parcel No. 743 to record the said Ferdinand James as being proprietor of 7,000 sq. ft to be dismembered therefrom in accordance with the Sketch Plan of Dunstan Joseph."

[71] The significance of this omission by Planviron and Rodney Bay Marina to even mention the Civil Code is that they sought in their application, as they have done in this appeal, to focus the court's attention on inconsistency between the **Land Registration Act** and the Prescription Rules, which is subordinate legislation, as opposed to inconsistency between the **Land Registration Act** and the Civil Code, which is the foundation of our land law, upon which foundation a land registration system was built. But the order of Belle J was

not made under the Prescription Rules; in fact it does not even mention the Prescription Rules. Indeed, the petition on which Belle J granted the order expressly stated that it was 'an application under [article] 2103A of the Civil Code'.

[72] Article 2103A of the Civil Code states:

> "Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

[73] Article 2103A is the legislative provision which establishes the right to acquire title to land by prescription; it is the provision which specifies the length of time for which a person must be in possession of the land for him to acquire title by prescription; it is the provision which defines the nature of the possession which the possessor must have to qualify for title by prescription; and it is the provision which gives jurisdiction to the court to issue a declaration of title to the land, as was done by Belle J in his January 2011 order.

[74] It is apparent, therefore, that the learned judge erred when he purported to set aside the order of Belle J on the basis of the implied repeal of the Prescription Rules by section 94 of the **Land Registration Act**, when Belle J's order was not made under the Prescription Rules, but under article 2103A of the Civil Code. As earlier mentioned, the application itself was not made under the Prescription Rules, but under article 2103A of the Civil Code.

[75] This alone should suffice to allow the appeal against the order of the learned judge granting summary judgment in favour of Planviron and Rodney Bay Marina and setting aside the order of Belle J. But I have deliberately framed the issue in this appeal in broader terms (in paragraph 15 above) so as to enable me to address the question of whether article 2103A of the Civil Code was itself impliedly repealed by section 94 of the **Land Registration Act**.

[76] Consideration of this question will revolve around the rules of statutory interpretation and on the status and standing of the Civil Code in the land law of Saint Lucia and the impact

on it of the **Land Registration Act**. Before delving into this, however, I should just address briefly the merits of the declaration by the learned judge on the implied repeal of the Prescription Rules by section 94 of the **Land Registration Act**.

The Prescription Rules

[77] The Prescription Rules, which were used by Planviron and Rodney Bay Marina as their pathway to launch their challenge to Belle J's order, and which pathway they were able to persuade the learned judge to travel along, are merely procedural rules setting out things like the methods and timelines for making the application for a declaration of title, which the Rules themselves say (at section 4) are to be made 'under article 2103A of the Civil Code'. The Rules are not the source of the jurisdiction of the court to make a declaration of title in favour of an applicant for title by prescription. A finding that they had been repealed has no real impact therefore on the jurisdiction of the High Court, upon application made to the court, to issue a declaration of title in favour of the applicant.

[78] In any event, I do not accept that the Prescription Rules have been repealed by the **Land Registration Act**, since the Rules are no more than signposts to point the way to the making and progressing of an application to the court for a declaration of title under article 2103A of the Civil Code. It is the repeal of article 2103A itself which would, therefore, impliedly repeal the Prescription Rules, or the making of other rules inconsistent with the Prescription Rules to apply for prescriptive title under article 2103A of the Civil Code.

[79] This then reinforces my earlier conclusion, at [75] above, that the order of the learned judge setting aside the order of Belle J was made on a wrong foundation and must itself be set aside by this Court, there being no application to or declaration by Belle J for prescriptive title under the Prescription Rules, and no justification in any event for the setting aside of Belle J's order on the basis of a perceived inconsistency or repugnancy between the Prescription Rules and the **Land Registration Act**.

Statutory Interpretation

[80] The rules of statutory interpretation which come into play in this appeal appear to be uncontroversial. The first, which is trite, is that a piece of legislation may be repealed by a subsequent piece of legislation, either expressly or by implication. The second, which is also trite, is that an intention to repeal a piece of legislation may either be expressed in the subsequent piece of legislation or may be inferred from the nature of the provision made by the later enactment.

[81] The third applicable rule, for the statement of which one can go as far back as 1892 in the English case of **West Ham Churchwardens and Overseers v Fourth City Mutual Building Society**,[29] is that '[t]he test of whether there has been a repeal by implication by subsequent legislation is this: Are the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier Act that the two cannot stand together?'. This rule has been applied in numerous cases since then. In our own Court, as recently as last year, Webster JA quoted and applied these exact words in a judgment delivered by him in the case of **The Permanent Secretary of the Ministry of Finance v Financial Investment and Consultancy Services Limited**.[30]

[82] A fourth rule of statutory interpretation applicable to this case can be found in the judgment of the English Court of Appeal in the case of **Henry Boot Construction (UK) Ltd. v Malmaison Hotel (Manchester) Ltd.**[31] where it was held that – 'the courts presume that Parliament does not intend an implied repeal'.

[83] To these agreed rules of statutory interpretation, I add my view that the presumption against implied repeal is strengthened in this case by the fact that the legislation which must be impliedly repealed in order to set aside the order of Belle J is not 'the Subordinate Rules' (as the respondents have nicknamed the Prescription Rules) but the Civil Code, which is the foundation of the property law of Saint Lucia. I find support for this view in the

[29] [1982] 1 QB 654, at 658.
[30] GDAHCVAP2016/0001 (delivered 13th March 2018, unreported).
[31] [2001] QB 388.

case of **BH (AP) v The Lord Advocate**[32] where the UK Supreme Court stated that the presumption against implied repeal 'is even stronger the more weighty the enactment that is said to have been repealed'; and statute law in Saint Lucia doesn't get much weightier than the Civil Code.

[84] The presumption against implied repeal is even further strengthened in this case by the fact that the two pieces of legislation which the learned judge found to be irreconcilably conflicting with each other are two pieces of legislation which coexisted for well over three decades.

[85] The strength of the presumption is then multiplied several times over when one factors in that the consequence of an implied repeal of the earlier legislation in this case is to oust the jurisdiction of the Supreme Court (by implication) in matters which the court has handled routinely for over sixty years and to nullify several declarations which the court has issued in the last thirty-four years.

[86] Based on the foregoing analysis of the rules of statutory interpretation at play on the facts and in the circumstances of this case, and the view which I take of the strength of the presumption against implied repeal in this case, I do not consider that article 2103A of the Civil Code was impliedly repealed by section 94 of the **Land Registration Act**. Notwithstanding, I propose now to address the status and standing of the Civil Code in the land law of Saint Lucia, and to juxtapose article 2103A of the Code with section 94 of the **Land Registration Act** with a view to determining whether article 2103A of the Code was impliedly repealed by section 94 of the Act.

The Civil Code and the Land Registration System

[87] The Civil Code was promulgated in 1879 and substantially revised in 1957. Although several English law amendments were introduced into the Code in the 1957 Revision, the land law of Saint Lucia remained largely intact, with concepts and/or terminology like

[32] [2012] UKSC 24, at para. 30.

usufruct and nudas proprietus, community and separate property, emphyteutic leases and hypothecary obligations (to name a few) continuing to differentiate the land law of Saint Lucia from the land law of the remainder of the British Commonwealth.

[88] In 1984, the land registration system - originating from the Torrens system of land registration in Australia and making its way through much of the Commonwealth - was introduced into the law of Saint Lucia by the enactment of the **Land Registration Act** and its companion statutes – the **Land Surveyors' Act**[33] and the **Land Adjudication Act**. The legislative history of the three statutes reveals that they were passed in 1984 (as Acts 11, 12, and 13 of 1984) and all three received the assent of the Governor General on 8th August 1984. The **Land Adjudication Act** and the **Land Surveyors' Act** came into force immediately upon their assent, but the coming into force of the **Land Registration Act** was delayed until 15th July 1985 in an effort to ensure that its enactment would be minimally disruptive to the existing land law of Saint Lucia contained in the Civil Code. In fact, the process of minimizing disruption did not end with the coming into force of the **Land Registration Act** in July 1985, but continued through to March 1987 when section 3 of the **Land Registration Act** was amended to remove the provision which gave precedence to the **Land Registration Act** over any law, practice or procedure relating to land. The deleted provision read:

> "Except as otherwise provided in this Act, no other law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act."

This specific amendment, made less than two years after the coming into force of the **Land Registration Act**, was intended precisely to ensure that the Act did not impliedly repeal existing land law located in the Civil Code, by the mere appearance of an inconsistency between a provision in the Code and a provision in the Act.

[89] The Torrens system of land registration created a regime of title by registration, so that a person has title to land by virtue of his registration as the owner of the land, and the three

[33] Cap. 5.07, Revised Laws of Saint Lucia 2015.

statutes enacted in 1984 established the mechanisms by which a person could become registered as the owner of a portion of land. There was a process, referred to as 'the land registration process' which went on for a number of years, during which all persons claiming ownership of land in Saint Lucia were asked to submit their claims to be registered as owners of the land or the holders of other registrable interests in the land. In the process of claiming land, a person making the claim had to establish the boundaries of the land which he was claiming, and the **Land Surveyors' Act** ensured that the demarcation of boundaries was able to be done in a structured way through the instrumentality of licensed land surveyors. In the submissions of claims to land, as expected, certain claims were disputed and the **Land Adjudication Act** established a mechanism for adjudication and resolution of disputes as to title to land during the registration process. In the process of registration of titles, there would have been cases where a person was registered as the owner of a parcel of land, but another person made a claim to displace and replace the registered owner of the land, by reason (say) of adverse possession, and the **Land Registration Act** provided an avenue to process such claims.

[90] The three Acts and the provisions which they made for claiming lands, demarcating boundaries and resolving disputes, were never intended to oust the jurisdiction of the Supreme Court to adjudicate upon disputes as to title to land registered under the **Land Registration Act**. On the contrary, section 115 of the Act specifically affirms the jurisdiction of the High Court to determine civil suits and proceedings relating to the ownership and possession of land. The section states:

> "Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or hypothec, registered under this Act or to any interest in any such land, lease or hypothec, being an instrument which is registered or registrable under this Act, or being an interest which is referred to in section 28, shall be tried by the Court, or where the value of the subject matter in dispute does not exceed two thousand dollars by a Magistrate's Court."

Section 2 of the Act defines "Court" as meaning the High Court.

[91] The situation prior to the judgment of 10th November 2017 was that section 94 of the **Land Registration Act** coexisted with article 2103A of the Civil Code from 15th July 1985 with no apparent difficulty. Scores of judges presided over cases in the High Court in Saint Lucia over the thirty-two year period between the coming into force of the **Land Registration Act** on 15th July 1985 and the judgment of 10th November 2011, some of whom would have presided over cases brought under article 2103A of the Civil Code - prescription of title to land being a fairly common claim in the courts in Saint Lucia. Yet in these thirty-two years, no judge has found that there is any irreconcilable conflict between section 94 of the **Land Registration Act** and article 2103A of the Civil Code to justify a judicial declaration that article 2103A of the Civil Code, which has stood the test of time for over sixty years, has been repealed by implication.

[92] It appears that there was a judicial epiphany in November 2017 which led to a finding that two legislative provisions which had coexisted for thirty-two years are so inconsistent with or repugnant to each other that one repeals the other. As a direct consequence of this epiphany and the declaration which it spawned, scores of previous declarations issued by the High Court in Saint Lucia on prescription of title, and some affirmed or uncritically accepted by the Court of Appeal of the Eastern Caribbean Supreme Court, are void ab initio because the article of the Civil Code under which the declarations were issued was repealed sub silentio by provisions in an ordinary Act of parliament.

[93] The Civil Code is more than just a statute which prescribes or proscribes some action or course of action. It is a code setting out an entire body of laws covering a significant portion of what constitutes the law or laws of Saint Lucia. One does not simply jettison long-standing and frequently-used provisions in the Code because ordinary legislation subsequently enacted appears to be inconsistent with the codal provisions; so if it appears, for instance, that a statute gives jurisdiction to a person or entity to do something, then the jurisdiction which exists by virtue of the Civil Code to do the same or a similar thing will thereby cease to exist. This is of even greater moment when the jurisdiction that is to be taken to be impliedly curtailed is the very fountain of jurisdiction of our legal system - the Supreme Court.

[94] I take the view that section 94 of the **Land Registration Act** has coexisted with article 2103A of the Civil Code since 1985 and can continue to do so unless and until there is a clear expression of the will of parliament that the two should no longer coexist.

[95] Section 94 of the **Land Registration Act** provides a route by which someone claiming to have acquired land by prescription may apply to the registrar of lands for registration as proprietor thereof, but it does not exclude the jurisdiction of the High Court under article 2103A to determine whether a person has acquired title by prescription to a portion of land. There is no necessary or unresolvable inconsistency, or repugnancy, arising from the possibility of there being an application before the registrar of lands for the grant of prescriptive title to a portion of land and an application to the High Court for the grant of a declaration of title with regard to the same portion of land. If this occurs, the Court - either on its own motion upon being notified, or upon application - may stay its own proceedings pending adjudication by the registrar of lands or may order a stay of the proceedings by the registrar pending adjudication by the Court. If the matter is adjudicated in favour of the person claiming prescriptive title, then the registrar, either on his or her own motion or by order of the court, will rectify the register accordingly.

[96] Counsel for Planviron and Rodney Bay Marina contended that section 97 of the **Land Registration Act** gives the power to the registrar of lands to rectify a land register in the cases mentioned in section 97(1). But this cannot be taken to mean that the registrar may not otherwise rectify the land register and, in particular, that he or she cannot do so if directed by order of the High Court, or for that matter, by order of the Court of Appeal or the Judicial Committee of the Privy Council. Then too there is section 115 of the **Land Registration Act** which specifically affirms the jurisdiction of the courts to try 'Civil suits and proceedings relating to the ownership or the possession of land… registered under this Act'.

[97] Mention should also be made of section 96 of the **Land Registration Act**, which gives to the registrar of lands the same authority to receive and approve applications for servitudes over land as do sections 94 and 95 with respect to applications for ownership of land by

prescription. Any finding that, by virtue of section 94 of the Act, the registrar is the sole authority empowered to receive and adjudicate applications for ownership of land by prescription must also mean that the power of the Supreme Court to determine that a person has acquired a right of way or some other easement over land is extinguished by section 96.

[98] To the argument advanced by Planviron and Rodney Bay as to the futility of making applications for prescriptive title to the Supreme Court under article 2103A of the Code when the title must still be registered by the registrar of lands, the same reasoning may be applied to deeds of sale, deeds of donation, mortgages, and all other forms of transfer of registered land, which have been and continue to be the modes of conveyance of registered land in Saint Lucia.

[99] All of the above reinforce my view that article 2103A of the Civil Code and section 94 of the **Land Registration Act** are not inconsistent with or repugnant to each other and, in any event, 'the provisions of [the] later Act are [not] so inconsistent with, or repugnant to, the provisions of [the] earlier Act that the two cannot stand together'. The above test, laid down by the English Court of Appeal in **West Ham Churchwardens and Overseers v Fourth City Mutual Building Society** and adopted by our Court of Appeal in **The Permanent Secretary in the Ministry of Finance v Financial Investments and Consultancy Services Limited**, was not therefore satisfied in this case so as to have resulted in a repeal by implication of section 2103A of the Civil Code consequent on the enactment of section 94 of the **Land Registration Act**.

[100] Given the significance and prevalence of claims to prescriptive title to land in the legal culture of Saint Lucia, if it was the will of parliament that prescription of title to land, which has hitherto been handled by the High Court, should be removed altogether from the jurisdiction of the court and placed exclusively in the domain of a civil servant, then parliament's intention would have been legislatively expressed and not judicially implied.

[101] It is true that in **Spiricor of St Lucia Limited v the Attorney-General of St Lucia and Another**, the Court of Appeal held that articles 957 and 1382 of the Civil Code are inconsistent with sections 23, 26, 37(1) and 56 of the **Land Registration Act** and that these articles of the Code were impliedly repealed by these sections of the Act. But **Spiricor** is distinguishable from the present case because the subject matter of articles 957 and 1382 of the Code are inconsistent with the very regime which was established by the **Land Registration Act**.

[102] Section 23 of the **Land Registration Act**, which is the kernel of the land registration system established by the Act, provides that: 'the registration of any person as the proprietor with absolute title of a parcel of land shall vest in that person the absolute ownership of that parcel'. Section 26 extends that treatment to Crown Lands. Section 37(1) then sets out the corollary of sections 23 and 26 and provides that:

> "No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or hypothec."

[103] Section 56 again emphasizes that it is the registration of an instrument of transfer of land to a person which makes that person the proprietor of the land.

[104] Article 957 of the Civil Code provides that title to land passes from the transferor to the transferee by the consent of the parties to the contract for alienation of the land once there is a deed of sale, or a memorandum in writing, stating the conditions of the sale. Article 1382 then adds the icing to the cake by defining sale as a contract by which one party transfers property to another, and which contract is effected by the consent alone of the parties.

[105] The conjoint effect of these two articles of the Civil Code, as far as land transfers are concerned, would be that two parties need merely agree (even orally) to the transfer of a parcel of land from one party to the other and, once there is a memorandum stating the

conditions of the sale, title passes from the transferor to the transferee, without the need for registration of the transfer.

[106] These two articles of the Civil Code cannot coexist with sections 23, 26, 37(1) and 52 of the **Land Registration Act**, which essentially establish the land registration system in Saint Lucia, because the articles are inconsistent with and repugnant to the very system of land registration established by the Act, by virtue of which title to land results from registration.

[107] I am therefore in agreement with the decision of the Court in **Spiricor** that articles 957 and 1382 of the Civil Code are so inconsistent with sections 23, 26, 37(1) and 56 of the **Land Registration Act** that these two articles of the Code must therefore have been impliedly repealed by these four sections of the Act. I do not understand though what about article 1980 of the Code is inconsistent with the earlier-referred to sections of the **Land Registration Act** so as to cause the former to be impliedly repealed by the latter. In any event, the statement made by Byron CJ [Ag.] in **Spiricor** about the inconsistency between article 1980 of the Code and "provisions of the Act" was made obiter and need not be further commented on here.

[108] It is conceivable that, as obvious a conflict as there was between sections 23, 26, 37(1) and 56 of the **Land Registration Act** and articles 957 and 1382 of the Civil Code, it could nonetheless have gone unnoticed by the drafters of the **Land Registration Act** because the conflicting provisions of the Code concern the law of contract and not land law per se, and could therefore have been overlooked in the enactment of a land registration system. But not so with a conflict bearing on the jurisdiction of the Supreme Court to adjudicate disputes relating to the ownership and possession of land, which it is hardly conceivable could have escaped the notice of the drafters, through whose words the intention of parliament is expressed.

[109] **Spiricor** having been distinguished, I return to the position that I expressed in [86] and [94] above, that article 2103A of the Civil Code is not inconsistent with section 94 of the **Land**

Registration Act or, in any event, not so inconsistent as to result in the implied repeal of the former by the latter and that the two legislative provisions have coexisted and can continue to do so unless and until it is the expressed will of parliament that one should give way to the other.

Conclusion

[110] For all of the foregoing reasons, I would have allowed the appeal against the judgment of the learned judge, set aside his order granting summary judgment to Planviron and Rodney Bay Marina, declared article 2103A of the Civil Code to be valid and subsisting law, and reinstated the order of Belle J made on 31st January 2011. I would also have remitted to the High Court the trial on the merits of the application filed by Planviron and Rodney Bay Marina on 19th May 2011 to set aside the order of Belle J, which trial would have been proceeded with on the basis that article 2103A of the Civil Code is valid and subsisting law. I would as well have ordered the respondents to pay the appellant's costs.

Mario Michel
Justice of Appeal

By the Court

Chief Registrar