

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE V HARRIS JA**

SUPREME COURT CIVIL APPEAL NO COA2022CV00040

BETWEEN	PIXLEY BROWN	APPELLANT
AND	SYBIL FENDER	1ST RESPONDENT
AND	ANTHONY BRYAN O/C HUDJOE	2ND RESPONDENT

**Mrs Tana'ania Small Davis KC instructed by Livingston, Alexander & Levy
for the appellant**

Dr Garth Lyttle instructed by Garth E Lyttle & Co for the respondents

11, 12 and 13 December 2023

Endorsement read by V Harris JA

[1] Having heard the submissions of the parties and considered the material before the court, these are our orders:

1. The appeal is allowed.
2. The orders of Bertram Linton J, made on 21 March 2022, are set aside on the basis that the personal representative of the estate of Vivian Fender ought to have been joined as a proper party to the claim.
3. The claim for trespass against the 2nd respondent, Mr Anthony Bryan, is remitted to the Supreme Court for trial.
4. An injunction is granted against the 2nd respondent, his servants and/or agents from constructing his house or building any structure on the land occupied by the appellant, Mr Pixley Brown, pending the determination of the claim for trespass.

5. An injunction is granted against the respondents, their servants and/or agents to restrain and prohibit them from entering or otherwise interfering with the appellant's possession and peaceful enjoyment of the land he currently occupies. This injunction is subject to the appellant filing a claim for adverse possession of the said land in the Supreme Court within three months of the date hereof, failing which the injunction shall be discharged.

6. No order as to costs in the court below. Costs of the appeal to the appellant to be agreed or taxed.